TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~559~~ 148

GUIDO PFISTER AND NICHOLAS JOHNSON, CLAIMANTS OF THE SCHOONER GREY EAGLE, APPELLANTS,

vs.

JOHN GREENING AND CHARLES N. DEOTT, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED DECEMBER 11, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 358.

GUIDO PFISTER AND NICHOLAS JOHNSON, CLAIMANTS OF THE SCHOONER GREY EAGLE, APPELLANTS,

vs.

JOHN GREENING AND CHARLES N. DEOTT, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin ss:*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the fourteenth day) of September, A. D. 1868. Present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit; Cassius Fairchild, marshal; Edward Kurtz, clerk.

Among other. the following proceedings were had. to wit:

Appeal in admiralty.

JOHN GREENING & CHARLES N. DEOTT, libellants, *vs.* SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants and respondents.

Be it remembered that heretofore, to wit, on the eleventh day of September, A. D. 1865, a certified copy of record in said cause in the district court of the United States for the district of Wisconsin, was received from the clerk of said court, and filed in the clerk's office of this court, as follows, to wit:

2 District court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the district court of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district of Wisconsin. on the second Monday (being the tenth day) of April, A. D. 1865. Present, the Honorable Andrew G. Miller, judge of said court, presiding; Darius C. Jackson, marshal; John M. Miller, clerk.

Among other, the followings proceedings were had, to wit:

JOHN GREENING & CHARLES N. DEOTT, libellants, *vs.* SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants. } In admiralty.

Be it remembered that heretofore, to wit, on the sixth day of December, A. D. 1864, came the above-named libellants by their proctors, Messrs. Finches, Lynde & Miller. and presented to the court their libel against the schooner Grey Eagle, her boats, tackle, apparel, and furniture, as follows:

Libel.—In admiralty.

To the judge of the district court of the United States for the district of Wisconsin:

John Greening, of Cleveland, and State of Ohio, owner, and Charles N. Deott, master of the schooner Perseverance, hereinafter mentioned, as well also for the several persons comprising the crew of the said schooner, as for themselves, exhibit this their libel
3 against the schooner Grey Eagle, now lying at the port of Milwaukee, in the district of Wisconsin aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein in a cause of collision, civil and maritime. And thereupon the said John Greening and Charles N. Deott, as well for themselves as for the crew of the said schooner Perseverance, allege and articulately propound as follows, to wit:

First. That the said schooner Perseverance was a vessel of more than twenty tons burthen, to wit, of 298 tons or thereabouts, and at the time when the cause of action hereafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting the said lakes.

Second. That on the 19th day of November, in the year 1864, the aforesaid schooner Perseverance, being tight, staunch, and well manned and provided, sailed from the port of Chicago, in the State of Illinois, with a valuable cargo of wheat, on a voyage to the port of Ogdensburgh, in the State of New York.

Third. That during the said voyage, to wit, about 6 o'clock a. m. of the 22d of November, in Lake Michigan, near the Ma-
4 nitou islands, wind west-northwest, blowing heavy, snowing and freezing, the said schooner Perseverance shipped a heavy sea, which washed away her screen and broke both her colored signal lamps, leaving her with nothing but a white light to exhibit; that about 11 o'clock a. m. of the same day, the master brought the schooner to anchor in the South Manitou harbor, wind northwest and freezing hard, where she remained until about 9 o'clock of the next day, when the master being unable to procure signal lights at that port, the schooner proceeded on her voyage, and at about two o'clook a. m. of the 24th of November, the said schooner was sailing down the straits of Mackinac, about two miles above Sheboygan light, wind south, her course lying east by south, the second mate of the said schooner, who then had the watch, and was the commanding officer on deck, being on the look-out, discovered lights ahead, and soon discovered that they were borne by a schooner approaching the said schooner Perseverance in a west north-west direction, apparently about half a mile distant, and then bearing about one point on her starboard bow; that, as soon as said second mate, as aforesaid, had discovered the approach of said vessel, he called the captain of said

schooner Perseverance, who came immediately on deck. The approaching vessel hauled up so much, that she shut out her red light, and the schooner kept on her course, the master and mate believing that the approaching vessel would pass clear of her on the starboard hand, until the vessels were nearly abreast, when the approaching vessel kept away again until she showed her red light. when the master of the schooner Perseverance called on the approaching vessel to luff, and several times repeated this request in a loud and audible voice, and at the same time ordered his own man at the wheel
5 to put the wheel hard a starboard. The approaching vessel made no reply, but kept on her course, and in less than two minutes, after first hailing said approaching vessel, she struck the said schooner stem on, abreast the starboard quarter, with such force as to sink her in about two minutes, and was, with her cargo, totally lost, her officers and crew having with difficulty saved their lives by getting on board the said vessel, which was the said schooner Grey Eagle.

Fourth. That the said schooner, by which the said damage was done, proved to be the Grey Eagle aforesaid, under the command of John Beckley as master thereof, and being of about 400 tons burthen, and bound on a voyage from Buffalo to Milwaukee; that at the time when the lights were first discovered from the Perseverance, as hereinbefore mentioned, the Perseverance carried a bright light suspended upon her poll post, which remained there until the schooner went down, and the said light could easily have been seen, and, if she kept a good look-out, must have been seen by her at the distance of half a mile, and in ample time, if she had kept on her course, to have prevented a collision.

Fifth. That, if at the time the said Grey Eagle was first hailed from the Perseverance, and thenceforth she had had a proper watch on deck, the warning given by the master of the Perseverance, as hereinbefore mentioned, must have been distinctly heard on board the Grey Eagle in season to have enabled her, by putting her helm to starboard, to pass the Perseverance in safety.

Sixth. That at the time when the danger of a collision between the vessels was first perceived, as aforesaid, from the Perseverance, it was impossible for her to get out of the way of the said Grey Eagle.

6 Seventh. That at the time of the aforementioned loss of the said schooner, the said John Greening was the true and lawful owner of the said schooner, and the said schooner was of the value of nine thousand dollars; that the freight on the cargo of said vessel was of the value of twenty-eight hundred and sixty dollars, and the clothing and other property belonging to the master and crew of said schooner, which was lost and destroyed by said collision, was of the value of twelve hundred dollars, or thereabouts; and that by reason of the careless, negligent, unskilful, and improper management of the schooner Grey Eagle, and of the collision thereby occasioned of the said schooner with the said schooner Perseverance, the libellants have sustained damage to the amount of fourteen thousand and sixty dollars or thereabouts, for which they claim reparation in this suit.

Libel.—In admiralty.

To the judge of the district court of the United States for the district of Wisconsin:

John Greening, of Cleveland, and State of Ohio, owner, and Charles N. Deott, master of the schooner Perseverance, hereinafter mentioned, as well also for the several persons comprising the crew of the said schooner, as for themselves, exhibit this their libel
3 against the schooner Grey Eagle, now lying at the port of Milwaukee, in the district of Wisconsin aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein in a cause of collision, civil and maritime. And thereupon the said John Greening and Charles N. Deott, as well for themselves as for the crew of the said schooner Perseverance, allege and articulately propound as follows, to wit:

First. That the said schooner Perseverance was a vessel of more than twenty tons burthen, to wit, of 298 tons or thereabouts, and at the time when the cause of action hereafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting the said lakes.

Second. That on the 19th day of November, in the year 1864, the aforesaid schooner Perseverance, being tight, staunch, and well manned and provided, sailed from the port of Chicago, in the State of Illinois, with a valuable cargo of wheat, on a voyage to the port of Ogdensburgh, in the State of New York.

Third. That during the said voyage, to wit, about 6 o'clock a. m. of the 22d of November, in Lake Michigan, near the Ma-
4 nitou islands, wind west-northwest, blowing heavy, snowing and freezing, the said schooner Perseverance shipped a heavy sea, which washed away her screen and broke both her colored signal lamps, leaving her with nothing but a white light to exhibit; that about 11 o'clock a. m. of the same day, the master brought the schooner to anchor in the South Manitou harbor, wind northwest and freezing hard, where she remained until about 9 o'clock of the next day, when the master being unable to procure signal lights at that port, the schooner proceeded on her voyage, and at about two o'clock a. m. of the 24th of November, the said schooner was sailing down the straits of Mackinac, about two miles above Sheboygan light, wind south, her course lying east by south, the second mate of the said schooner, who then had the watch, and was the commanding officer on deck, being on the look-out, discovered lights ahead, and soon discovered that they were borne by a schooner approaching the said schooner Perseverance in a west north-west direction, apparently about half a mile distant, and then bearing about one point on her starboard bow; that, as soon as said second mate, as aforesaid, had discovered the approach of said vessel, he called the captain of said

schooner Perseverance, who came immediately on deck. The approaching vessel hauled up so much, that she shut out her red light, and the schooner kept on her course, the master and mate believing that the approaching vessel would pass clear of her on the starboard hand, until the vessels were nearly abreast, when the approaching vessel kept away again until she showed her red light. when the master of the schooner Perseverance called on the approaching vessel to luff, and several times repeated this request in a loud and audible voice, and at the same time ordered his own man at the wheel to put the wheel hard a starboard. The approaching vessel made no reply, but kept on her course, and in less than two minutes, after first hailing said approaching vessel, she struck the said schooner stem on, abreast the starboard quarter, with such force as to sink her in about two minutes, and was, with her cargo, totally lost, her officers and crew having with difficulty saved their lives by getting on board the said vessel, which was the said schooner Grey Eagle.

Fourth. That the said schooner, by which the said damage was done, proved to be the Grey Eagle aforesaid, under the command of John Beckley as master thereof, and being of about 400 tons burthen, and bound on a voyage from Buffalo to Milwaukee; that at the time when the lights were first discovered from the Perseverance, as hereinbefore mentioned, the Perseverance carried a bright light suspended upon her poll post, which remained there until the schooner went down, and the said light could easily have been seen, and, if she kept a good look-out, must have been seen by her at the distance of half a mile, and in ample time, if she had kept on her course, to have prevented a collision.

Fifth. That, if at the time the said Grey Eagle was first hailed from the Perseverance, and thenceforth she had had a proper watch on deck, the warning given by the master of the Perseverance, as hereinbefore mentioned, must have been distinctly heard on board the Grey Eagle in season to have enabled her, by putting her helm to starboard, to pass the Perseverance in safety.

Sixth. That at the time when the danger of a collision between the vessels was first perceived, as aforesaid, from the Perseverance, it was impossible for her to get out of the way of the said Grey Eagle.

6 Seventh. That at the time of the aforementioned loss of the said schooner, the said John Greening was the true and lawful owner of the said schooner, and the said schooner was of the value of nine thousand dollars; that the freight on the cargo of said vessel was of the value of twenty-eight hundred and sixty dollars, and the clothing and other property belonging to the master and crew of said schooner, which was lost and destroyed by said collision, was of the value of twelve hundred dollars, or thereabouts; and that by reason of the careless, negligent, unskilful, and improper management of the schooner Grey Eagle, and of the collision thereby occasioned of the said schooner with the said schooner Perseverance, the libellants have sustained damage to the amount of fourteen thousand and sixty dollars or thereabouts, for which they claim reparation in this suit.

Eighth. That all and singular the premises are true.

Wherefore. the libelants pray that process in due form of law may issue against the said schooner Grey Eagle, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid, with costs, and for such other and further relief as to right and justice may appertain and the court is competent to give in the premises.

JOHN GREENING,
By CHARLES × N. DEOTT.
his
CHARLES × N. DEOTT.
mark.

FINCHES, LYNDE & MILLER,
Proctors for Libellants.

WM. LYNDE, *Advocate.*

7 DISTRICT OF WISCONSIN, *ss:*

Charles N. Deott sworn to the truth of the foregoing libel before me, this third day of December, 1864.

J. M. MILLER, *Clerk, &c.*

And same day (December 6, 1864) said libellants filed their stipulation, as follows:

8 District court of the United States for the district of Wisconsin.

Libellants' stipulation.

Whereas a libel was filed in this court on the sixth day of December, in the year of our Lord one thousand eight hundred and sixty-four, by John Greening and Charles N. Deott against the schooner Grey Eagle, for the reasons and causes in the said libel mentioned, and praying that process in due form of law may issue against said schooner and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and they are, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall abide by the final decree entered in the cause, and shall pay all such costs as shall be awarded against by this court, or, in case of appeal, by the appellate court.

C. N. DEOTT.
ROBERT P. FITZGERALD.

Taken and acknowledged this sixth day of December, 1864, before me.

J. M. MILLER,
U. S. Commissioner.

DISTRICT OF WISCONSIN, *ss:*

Robert P. Fitzerald, party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ROBERT P. FITZGERALD.

Sworn to this sixth day of December, 1864, before me.

J. M. MILLER,
U. S. Commissioner.

9 *Order for process and advertisement.*

Whereupon it is ordered by the court that a monition issue to the marshal, returnable on the fifteenth day of December instant, at eleven o'clock in the forenoon, and that this court will on that day proceed to the trial and hearing thereof.

And it is further ordered that notice be given by advertisement in the Daily Milwaukee News, a daily paper printed in the city of Milwaukee, and by notices posted in the most public places at and near the place of trial, for at least six days.

Whereupon a monition issued, as follows:

Monition.

10 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the sixth day of December, in the year of our Lord one thousand eight hundred and sixty-four, by John Greening and Charles N. Deott, against the schooner Grey Eagle, her boats, tackle, apparel, and furniture, for the reason and cause in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said schooner or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said schooner or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the district of Wisconsin, on the fifteenth day of December instant, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and

what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this sixth day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth.

J. M. MILLER, *Clerk.*

FINCES, LYNDE & MILLER,
Proctors for Libellant.

11 *Return to monition.*

In obedience to the within precept, I have this 7th day of December, A. D. 1864, attached the schooner Grey Eagle, her boats, tackle, apparel, and furniture, at Milwaukee, and have given due notice by publication for six days in the Milwaukee Daily News, and by posting notices, to all persons claiming the same, that this court will, on the fifteenth day of December next, at eleven o'clock in the forenoon of that day, should the same be a day of jurisdiction, otherwise on the first day of jurisdiction thereafter, proceed to the trial and condemnation thereof, unless a claim should be interposed for the same, and they make their allegations in that behalf.

D. C. JACKSON, *Marshal,*
By W. S. JACKSON, *Deputy.*

Fees, $14 35.

And afterwards, to wit, on the sixteenth day of December, A. D. 1864, came the respondents, Guido Pfister and Nicholas Johnson, by their proctors, Messrs. Emmons & Van Dyke, and filed their answer as follows:

12 The district court of the United States for the district of Wisconsin.—In admiralty.

Answer.

The claim and answer of Guido Pfister and Nicholas Johnson, of the city of Milwaukee, in said district, owners of the schooner Grey Eagle, intervening for their interests in said schooner, her tackle, apparel, and furniture, to the libel of John Greening, Charles N. Deott, and the several persons composing the crew of the schooner Perseverance, not named in said libel, allege as follows:

First. That the said Guido Pfister and Nicholas Johnson are the true and bona fide owners of the schooner Grey Eagle, her tackle, apparel, and furniture, and that no other person is the owner thereof.

Second. That the first article of said libel is true, as these respondents are informed and believe.

Third. That these respondents have no knowledge, information, or belief as to the matters in the second article of said libel alleged and pleaded, and leave the libellants to their proofs in that behalf.

Fourth. That as to the matters contained in the third, fourth, fifth, and sixth articles of the said libel, the same are therein in great part falsely and untruly alleged and pleaded, for the truth and fact was and is, and these respondents allege and propound that the schooner Grey Eagle is a vessel of three hundred and eighty tons burthen or thereabouts, and, at the time when the collision hereinafter mentioned and set forth occurred, was enrolled and licensed for the
13 coasting trade, and was employed in her business of commerce and navigation between ports and places in different States of the United States, upon the lakes and navigable waters connecting the said lakes, and was at the time herein mentioned tight, staunch, well manned and provided. That as these respondents are informed and believe and so allege, about the time in that behalf, in the third article of said libel alleged, the said schooner Grey Eagle was sailing up the straights of Mackinaw, on a voyage from the port of Buffalo to the port of Milwaukee aforesaid; that when about two miles to the northard and eastward of the Sheboygan light, which is about ten miles below the port of Mackinaw, the Grey Eagle being in the usual course of vessels coming up the straits, heading west-northwest, the wind being south-southwest, the first mate then had the watch and was the commanding officer on deck; the said schooner had two men on the look-out forward, besides the said commanding officer, who was in his proper position, and a competent man at the wheel, and carried a red light on her port bow and a green light on her starboard bow, of the character and description, in the position and fitted as is required by the regulations in that behalf provided; that when in the place aforesaid, a white light was seen about a mile distant, bearing about a point on the Grey Eagle's port bow, which was supposed to be a light on shore, or upon a vessel at anchor; the Grey Eagle was then kept away about a point and steadied on her course to give birth to the light; the light was not discovered to be a vessel's light in motion by the commanding officer until the Perseverance got within about three lengths of the Grey Eagle, the
14 said light being then nearly ahead and to windward; the light was then supposed to be the binnacle light of a vessel that had hauled up all she could to pass the Grey Eagle to windward; the mate, not seeing any other light, ordered the helm hard a-port, so as to pass on the port side and keep off and clear the stern of the vessel, and stepped to windward of his vessel, and then heard for the first time a cry from the other vessel to port the helm hard down, but it was too late, the vessels were right together; that the Perseverence, instead of passing the Grey Eagle on the port side, as she should have done, she, without the knowledge of the commanding officer or men of the Grey Eagle, and without any lights to indicate her course, and contrary to any known or prescribed rules of navigation, came right across the bows of the Grey Eagle, and was struck by the Grey Eagle on her starboard quarter in the forward part of the cabin. The Perseverence, at the time the vessels collided, was heading about between north and northeast, right across the course of the Grey Eagle. That the officers and crew of the Grey Eagle

heard no warning from the Perseverance, and had no notice or light to indicate the position or course of the Perseverance, until just at the instant of the collision, when it was impossible for the Grey Eagle to do more than she did do to avoid the collision.

Fifth. That these respondents are informed and believe, and so propound and allege, that the anchorage along the straits of Mackinaw is as good and safe as in any harbor on the lakes; that the harbor at the port of Mackinaw is easily accessible to vessels passing down the straits, and is in the direct course of vessels so passing down said straits; that the schooner Perseverance, if she had no lights
15 to exhibit to indicate to other vessels her course and position, as is required by the rules and regulations prescribed for preventing collisions on the water, should have come to an anchor during the night, and exhibited her white light, which is the light prescribed for vessels at anchor.

Sixth. These respondents, upon information and belief, propound and allege, that the port of Mackinaw, near which place the collision aforesaid took place, is a port of entry, and that the regulation lights for vessels can at all times be procured at that port; that the said schooner passed right by said port of Mackinaw without coming to an anchor, and without procuring proper lights, without which she had no right to navigate between sunset and sunrise; but the said schooner Perseverance, without regarding her duty in that behalf, kept on her voyage aforesaid down the straits, to the great danger of other vessels and the lives of their crews.

Seventh. That the said schooner Perseverance, as these respondents are informed and believe, and so allege and propound, had on board a master and first and second mate; that the watch on deck at the time the schooner Perseverance collided with the Grey Eagle, was the master's watch, but that instead of his being on duty in said watch, he was below until just before the collision took place, and the said Perseverance was left in charge of the second mate of said vessel to prosecute her voyage as aforesaid, notwithstanding her disabled condition, as in the third article of said libel is alleged.

Eighth. That as to the matters contained in the seventh article of said libel, the same are therein, in great part, falsely and un-
16 truly alleged and pleaded, for the truth and fact as these respondents are informed and believe, was and is, that the schooner Perseverance was a very old vessel, and of but little value; that the claim for clothing and property is a grealty exagerated one; that the alleged value of the freight upon the cargo of said schooner Perseverance is grossly overstated, and these respondents propound and allege that the several claims in said seventh article of said libel are improperly joined; that the collision in the third article said libel mentioned, and in said seventh article thereof referred to, was occasioned wholly by and through the mere carelessness, negligence, and improper conduct of the master of the schooner Perseverance, and his mariners and servants, and the insufficiency and unseaworthyness of the said schooner Perseverance, and not by reason of want of care or efficiency of the master and crew of the schooner Grey Eagle.

Ninth. That all and singular the premises are true. Wherefore

the respondents pray that this honorable court will pronounce against the demands of the libellants in their aforesaid libel mentioned and set forth, with costs.

GUIDO PFISTER.
NICOLAS JOHNSON,
By GUIDO PFISTER.

EMMONS & VAN DYKE,
Respondents' Proctors.

On this 15th day of December, 1864, appeared personally Guido Pfister, and was sworn to the truth of the foregoing answer before me.

[SEAL.] GEO. COGSWELL,
Notary Public in and for the State of Wisconsin, residing in Milwaukee County.

JANUARY 27, 1865.

Deposition received from the post office and filed.

MARCH 31, 1865.

Deposition received from the post office and filed.

17 APRIL 15, 1865.

Deposition received from the post office and filed.

And now, at this same term, to wit, April term, A. D. 1865, and on the 12th day thereof. to wit, on the twenty-second day of June, A. D. 1865, the following proceedings were had, to wit:

Motion to amend answer.

JOHN GREENING *et al.*
vs.
SCHOONER GREY EAGLE, &c. } In admiralty.

This day came the respondents, by their counsel, Mr. Van Dyke, and moved the court for leave to file an amendment to the answer, and the said motion having been argued by counsel, on objection thereto on the part of the libellants, it is ordered by the court that the said amendment be allowed to be made.

And said amended answer is as follows:

The district court of the United States for the district of Wisconsin.

Amended answer.

JOHN GREENING, CHARLES N. DEOTT, and others, libellants,
vs.
THE SCHOONER GREY EAGLE, HER tackle, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants—respondents. } In admiralty.

Amendments to the answer of Guido Pfister and Nicholas Johnson in this cause, made pursuant to the order of this court this day made.

Amendment 1st. In the 4th line from the end of the second page,

and in the fourth article of said answer, strike out the word "eastward" and insert in lieu thereof the word "westward."

18 Amendment 2nd. After the eighth article of said answer, and preceeding the ninth article, insert the following article, designated "Eighth A," to wit:

"Eighth A." That the respondents are informed and believe and so allege, that the cargo of wheat, mentioned in tho second article of said libel consisted of twelve thousand uine hundred and nineteen bushels and forty-sixtieth bushels of No. one spring wheat; that said wheat was not the property of the libellants, or of any or either of them, but was shipped on board the said schooner on or about the nineteenth day of November, A. D. 1864, by G. & J. Watson, as agents at Chicago, in the State of Illinois, consigned to S. S. Bean, Ogdensburg, New York; that said wheat was of the value of one dollar and seventy to one dollar and eighty cents per bushel, or thereabouts, and was wholly lost with said schooner Perseverance by the collision in said libel mentioned; that the schoonor Grey Eagle and her freight then pending is not and at the time of said collision was not of a value of more than seven thousand dollars, or thereabouts, and not of a value equal to the one-third of the value of the said schooner Perseverance, her cargo, and the property alleged to have been on board and lost by said collision; and they claim that in case it should be determined that the said schooner Grey Eagle or her said owners incurred any liability by reason of said collision, that the libellants' recovery, by reason of an act of Congress of the United States of America, entitled "An act to limit the liability of ship owners and for other purposes," approved March 3d, 1851, is limited to a sum which the value of the property of the respective libellants and of the owners of said cargo of wheat bears to the value of the schooner Grey Eagle.

EMMONS & VAN DYKE,
Proctors for Respondents.

19 And on the thirteenth day of said term, to wit, on the twenty-third day of June, A. D. 1865, the following proceedings were had, to wit:

Hearing.

JOHN GREENING *et al.*
vs.
THE SCHOONER GREY EAGLE, &c. } In admiralty.

This day came the parties by their counsel, and the hearing of this cause was resumed, and not being concluded, the further hearing was adjourned until to-morrow morning.

And on the fourteenth day of said term, to wit, on the twenty-fourth day of June, A. D. 1865, the following proceedings were had, to wit:

Hearing.

JOHN GREENING *et al.*
vs.
SCHOONER GREY EAGLE, &c. } In admiralty.

This day came the parties by their counsel, and the hearing of this cause was resumed, and not being concluded, the further hearing was adjourned until Monday morning next.

And on the fifteenth day of said term, to wit, on the 26th day of June, A. D. 1865, the following proceedings were had, to wit:

Hearing.

JOHN GREENING *et al.*
vs.
SCHOONER GREY EAGLE, &c. } In admiralty.

This day came the parties by their counsel, and the hearing of this cause was resumed, and not being concluded, the further hearing was adjourned until to-morrow morning.

And on the sixteenth day of said term, to wit, on the twenty-seventh day of July, A. D. 1865, the following proceedings were had, to wit:

Hearing.

JOHN GREENING *et al.*
vs.
SCHOONER GREY EAGLE, &c. } In admiralty.

This day came the parties by their counsel, and the hearing of this cause was concluded, and the court, not being sufficiently advised of and concerning the same, held the same under advisement.

And afterwards, on the twenty-fourth day of July, A. D. 1865, came the same libellants by their proctors, and filed their stipulation as follows:

The district court of the United States for the district of Wisconsin.

Stipulation as to value of vessel, &c.

JOHN GREENING AND OTHERS, libellants,
vs.
THE SCHOONER GREY EAGLE, HER TACKLE, &c. — Guido Pfister and another, claimants—respondents.

It is hereby stipulated that the value of the said schooner is the sum of eight thousand dollars, and that said schooner may be released from custody upon respondents giving bond in that amount

without appraisal, upon either Pfister or Vogel going upon the bond without other sureties.

21 Dated July 24, 1865.

WM. P. LYNDE,
Proctors for Libellants.

Record entry.

And same day (July 24, 1865) came Guido Pfister and Nicholas Johnson, as claimants of schooner Grey Eagle, and presented their stipulation in the sum of eight thousand dollars, as follows:

22 District court of the United States for the district of Wisconsin.—In admiralty.

Whereas a libel was filed on the sixth day of December, in the year of our Lord one thousand eight hundred and sixty-four, by John Greening and Charles N. Deott, against schooner Grey Eagle, her boats, tackle, apparel, &c., for the reasons and causes in the said libel mentioned. And whereas the said schooner Grey Eagle, her boats, tackle, &c., is in the custody of the marshal under the process issued in pursuance of the prayer of said libel, as appears from the monition now on file in said court.

Appearing personally Guido Pfister and Nicholas Johnson, as the claimants of the said schooner Grey Eagle, and the said Guido Pfister and Nicholas Johnson submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors, and administrators in the sum of eight thousand dollars unto the said John Greening and Charles N. Deott; that the said Guido Pfister and Nicholas Johnson shall abide and answer the decree of the said court in the aforesaid cause; and unless they shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

GUIDO PFISTER.
NICHOLAS JOHNSON.

Taken and acknowledged this twenty-fourth day of July, 1865, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

DISTRICT OF WISCONSIN, *ss:*

Guido Pfister and Nicholas Johnson, parties to the above stipulation, being duly sworn, deposes and says that they are each worth the sum of eight thousand dollars above all their just debts and liabilities.

GUIDO PFISTER.
NICHOLAS JOHNSON.

Sworn to this twenty-fourth day of July, 1865, before me.

J. M. MILLER,
U. S. Commissioner, Wisconsin.

23 *Order for warrant of restitution.*

Whereupon it is ordered by the court that a warrant of restitution be issued to restore the said schooner Grey Eagle to the said claimants.

Warrant of restitution issued as follows:

24 DISTRICT OF WISCONSIN, *ss:*

The President of the United States of America, to the marshal of the district of Wisconsin, greeting:

Whereas a libel has been filed in the district court of the United States for the district of Wisconsin, on the sixth day of December, in the year of our Lord one thousand eight hundred and sixty-four, by John Greening and Charles N. Deott, against schooner Grey Eagle, her boats, tackle, apparel, and furniture, praying that the same may be condemned as forfeited to the said libellants; and whereas the said schooner Grey Eagle, her boats, &c., &c., has been attached by the process of the said court in pursuance of the prayer of the libel, and is now in your custody in virtue of said process; and whereas, also, a claim has been interposed and filed in said court by Guido Pfister and Nicholas Johnson, and such proceedings have been thereupon had, that by the sentence and decree of said court in this cause, made and pronounced on the twenty-fourth day of July, eighteen hundred and sixty-five, the said schooner Grey Eagle, her boats, tackle, apparel, and furniture, was adjudged to belong as claimed, and was ordered to be restored to the said claimant. Therefore you, the said marshal, are hereby commanded to release the said schooner Grey Eagle, her boats, tackle, apparel, and furniture, from arrest, and to deliver and return the same unto the said Guido Pfister and Nicholas Johnson; and what you have done in the premises do you make return thereof before the said court of admiralty forthwith, together with this writ.

Witness, the Honorable Andrew G. Miller, judge of the district court of the United States of America, for the district of Wisconsin, at the city of Milwaukee, in said district, this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of these United States the ninetieth.

[SEAL] J. M. MILLER, *Clerk.*

25 *Return to warrant of restitution.*

"In obedience to the within warrant of restitution, I have this 24th day of July, 1865, released the schooner Grey Eagle, her boats, tackle, apparel, and furniture, from arrest, as within commanded.

D. C. JACKSON, *Marshal.*
By W. S. JACKSON, *Deputy.*

And at the hearing of said cause, the following depositions were read, and admitted as testimony, on the part of the libellants:

Libellants' testimony.

26 District of Wisconsin.

JOHN GREENING, OWNER, AND CHARLES N. Deott, master,
against
THE SCHOONER GREY EAGLE, HER TACKLE, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants
} In admiralty.

ALFRED LIST, being duly sworn, deposes and says:

I am twenty years of age. My occupation is that of a sailor. My residence is in Cleveland. I have been sailing for the last four seasons—three and a half years before the mast, the last half year as mate and second mate. I have sailed on the lakes during all that time. I was on the schooner Perseverance during last season as second mate. I was on board of her on her last trip. She was on her way from Chicago to Ogdensburg at the time. It was on Saturday, the 19th day of November last, I think, that she left Chicago. She had on board a cargo of wheat. She had on board, I think, 12,500 bushels of wheat, but I am not sure. We left Chicago Saturday afternoon, and, on going down, encountered a heavy snow-storm and wind. We were then off Milwaukee. We kept the shore down as far as Manitowoc. We then shaped a course for South Manitou Going over, we had a single-reefed foresail and double-reefed mainsail. We shipped a sea, carried away our screen and both our signal lamps. When we got as far as South Manitou, it was blowing so heavy and iced up we ran in there for shelter. We got underweigh the day following, (Wednesday.) We got down as far as the straits, and all we had to show was a bright signal lamp in the night. When we were about six miles above Sheboygan light, we made a vessel's light about a point and a half on our weather bow. The wind was
27 from the eastward of southward, if anything. I was on watch at the time; our course was east and by south at this time. I waited about ten minutes before I called the captain. I called the captain up twenty minutes before we collided with the schooner Grey Eagle. I first made her lights. I saw a red and green light. We shut out her red light and saw nothing but the green light. We had not changed her course. We had not shut her red light until the captain came on deck. As we neared each other she still kept on our weather bow until she got about three or four lengths of us. She then kept away.

Ques. How far on your starboard bow was the Grey Eagle?

Ans. About four points on our starboard bow. She then kept away and showed us a red light. The captain jumped on the rail. We all sung out for to keep her luff. She was then about three or four lengths of us from us. I could see her sails distinctly; I could have seen them two or three minutes before that. We were going between five and six miles an hour at the time we called on them to

luff. He called on the man at the wheel of our vessel to keep his helm hard up. Up to that time we had kept steady on our course from the time we first saw the Grey Eagle's light. Instead of her luffing, she kept on keeping away. She came into us about twenty feet from the stern, and we went down inside of two minutes. Whether the helm on our vessel was put hard up when ordered I don't know, but the vessel went off four or five points. The jib-boom of the Grey Eagle went thro' our mainsail over the cabin. We got on board the Grey Eagle as fast as we could by means of her head gear. When we first made the light of the Grey Eagle there were three of us on deck.

Quest. On the look-out?

(Objected to for the reason that it is directly leading and
28 not a proper question.)

Ans. There was one man on the look-out, named John Doyle; he was forward. There was one man at the wheel, named Michael Brown. I was walking the decks between the mainmast and the cabin. At the time of the collision there were on deck the captain, myself, the man at the wheel, the man on the look-out. The man whose watch was below, named Louis Dempsey, came also on deck. It was about a minute and a half before the Grey Eagle struck us that we apprehended a collision. The Grey Eagle changed her course at that time. She kept off about four points. That was before we hailed her to luff. She would have passed us clear on our starboard side if she had not changed her course.

Quest. If, at the time you hailed her to luff, she had luffed, would there have been any difficulty in her passing you?

(Objected to as leading and immaterial.)

Ans. No. The vessel and cargo were a total loss. We saved nothing in the way of clothing but what we had on at the time of the time of the collision. All but two of our men got on board of the Grey Eagle by the fore rigging; we hauled the two up out of the water by a rope.

Ques. What did the capt. do at the Manitous about signal lights?

(Objected to as immaterial, and as it is well known that the Manitous are nothing but a wood-dock.)

Ans. We went ashore and tried to get some, but could not.

Quest. Can you give any estimate of the value of the clothing of the captain and hands on board the Perseverance?

(Object to any estimate of the value of the property without a bill of particulars of the property lost claimed by each.)

Ans. There was from twelve to fifteen hundred dollars' worth of clothing. When I first came on the deck of the Grey Eagle
29 I guess all hands were on deck, as near as I know. I had a conversation with some of the hands on board the Grey Ea le as to the manner in which the collision occurred. I conversed with the man at the wheel.

Quest. What did he say?

(Objected to as immaterial and inadmissable.)

Ans. I asked him how he had the wheel. He said he did not know. I asked him what orders the mate gave him. He said he gave him no orders whatever. I then asked him what he did. He said he did not do anything. He said he did not see our light at all. I had a conversation with the ship-carpenter that was on board, about the light on our vessel.

Quest. What did he say about it?

(Same objection as last above.)

Ans. He said he did not see our light until he heard us holloaing to keep her luff. No other man spoke to me on board the Grey Eagle about our lights. The collision occurred about northwest from Sheboygan light, between two and three miles from Sheboygan light. The night was a cold, pleasant night, a little cloudy. I could not say it was a light night or a dark night. I could see the shore to windward of us, but I did not look to leeward. We were nearest the shore to leeward. We were very near the middle of the straits, a little more to the northward.

Cross ex:

Ques. When and upon what vessel did you serve as first or second mate?

Ans. On the J. C. Hill. She belongs to Cleveland.

Ques. When and in what capacity?

Ans. Last August, as first mate. I sailed one trip in the capacity of first mate. It was about 20 days. My next service was on the William G. Grant as second mate for five weeks. My next trip was on the schooner Perseverance, for 28 days, as second mate.

Ques. What buildings are at South Manitous, and what business is done there?

Ans. The business is wooding propellers, I believe; there are but four buildings there, and what they are I do not know.

Ques. Do you know what the captain did there with reference to signal lights, of your own knowledge, besides going on shore?

Ans. I merely know that he went on shore, and what he did after that I don't know. Our lights were washed away in the night-time; they were washed away in the first mate's watch. I was on board when they were washed away. I think they were both washed away by the same sea; but I could not swear to it, as I was not on deck. The Perseverance carried an old-fashioned lamp with a green light, and a globe lamp with a red lamp, a patent fellow. These were all the signal lights she had on board when she left Chicago, except some white globe lamps.

Ques. What do you mean by a red globe lamp, a patent fellow?

Ans. It is a lamp that stands about eighteen inches high; it is a ribbed glass lamp. I don't know where we got the lamp. I don't know whether it was on board when I shipped or not.

Ques. During the 27 or 28 days you sailed on board the Perseverance, were those all the signal lamps you carried?

Ans. Yes.

Ques. At what ports during these 27 or 28 days did you touch or pass?

Ans. We left Cleveland, stopped first at Milwaukee. We then went to Racine. From there we went to Chicago. We passed Detroit. We did not stop there.

Ques. In the night-time, where was this red globe lamp suspended, and how was it fastended to the vessel?

31 Ans. On our way up we carried the lights, the red light on the port side of the forerigging and the green one on the starboard side of the forerigging; when we came in here into the creek, our lines parted and carried away the boxes the lamps stood in. We did not use the lamps again till we left Chicago. When at Chicago we made some new boxes, and placed them on the pawl post forward, and that is where they where when carried away.

Ques. Who made the boxes, and who fastened them to the pawl post?

Ans. Some of the men on board the vessel. The lights were secured by lanyards fastened to the boxes, and then to the lights. The boxes were secured to the pawl post by nails. The captain directed the boxes to be nailed and placed on the pawl post.

Adjourned until December 27, 1864, at 9 a. m.

JAMES MITCHELL.

The parties met pursuant to adjournment.

We had five men forward, the captain, first and second mate, on board the Perseverance; that was all the men she carried. I was in the captain's watch; that watch commenced that night at 12 o'clock. I was about half an hour in command during that watch; we had shipped a sea shortly before them, and the captain was down changing his clothes while I had the watch. It took him half an hour to change his clothes and get warm. He came up as far as the scuttle once or twice during the half hour. He just stepped on deck to see if everything was going right, and went back again. We were carrying a bright signal lamp at this time; it was placed forward on the pawl post.

Ques. What do you mean by a bright signal lamp, and what was this light you was carrying?

Ans. It was an old-fashioned signal lamp of the style used before the new lights came out.

Ques. How many lights would this signal lamp show?

32 Ans Three before it was broken. The red glass and green glass were broken.

Ques. Was that one of the lights you speak of as having been washed away?

Ans. Yes.

Ques. What broke these lights?

Ans. The sea.

Ques. During the captain's watch, when you were in command of the dock, who was at the wheel?

Ans. Michael Brown.

Ques. Is he here?
Ans. He is.
Ques. Who was on the look-out?
Ans. John Doyle.
Ques. Is he here?
Ans. Yes.
Ques. Had you any more than one man on the look-out?
Ans. No; except myself.
Ques. You have stated that just previous to the collision, and before you changed your course, that your course was east by south; that the wind was east of south; did you look at the compass?
Ans. I did.
Ques. If that was the direction of the wind, how could you head east by south; how did you make six miles an hour?
Ans. I did not say we made six miles an hour; I said between five and six miles an hour.
Ques. What canvas were you carrying?
Ans. Mainsail, foresail, port staysail jib, jib, and flying jib.
Ques. Were the mainsail and foresail reefed?
Ans. No.
Ques. With the wind in the direction you have stated, and with the course of your vessel, how did you make four miles an hour?
Ans. By being there; that is all I know.
Ques. Do you know of another vessel could make it?
Ans. Plenty.
Ques. Name one.
Ans. The William G. Grant, of Cleveland.
33 Ques. You have stated the direction of the wind, and the course of your vessel as given above, and that before the collision you were four points to the leeward of the Grey Eagle, and that you saw both her green and red light. Is that true or not true?
Ans. I saw a red and green light as soon as she kept away, and I saw them when I first made her out, about twenty minutes before. We were from a point to a point and a half to the leeward of the Grey Eagle when I first saw her.
Ques. Do you swear that if you were from a point to a point and half to the leeward of the Grey Eagle that on the course the respective vessels were sailing as described by you, you could see the red light at all?
Ans. No; unless she kept away, or by bad steering.
Ques. How far from direct ahead to leeward could you be and see the red light on the course the respective vessels were sailing?
Ans. Not over half a point.
Ques. When you first saw the red and green light of the Grey Eagle, how far were you from her?
Ans. Between five and six miles.
Ques. If when you first made the red and green light of the Grey Eagle, you were five or six miles from her, and the lights were from a point to a point and a half on your weather bow, your vessel steering east by south, the Grey Eagle west by north, after running that

distance on their courses, how could you be to the leeward of the Gray Eagle, if you could only see her red light, when you were but half a point to the leeward, at a distance of five or six miles?

Ans. Easy enough; we were to the leeward of the Grey Eagle.

Ques. When you first saw those lights how much were you to the leeward?

Ans. A point and a half.

Ques. Do you again swear that you could see the Grey Eagle's light, and you a point and a half to leeward?

Ans. Not unless she kept away and showed it to us.

34 How much would the Grey Eagle have to swing in sailing to show you the red light, if you were a point or a point and a half to leeward, at a distance of five miles?

Ans. One point.

Ques. You seeing the Grey Eagle's lights, both red and green, at a distance of five miles with the courses you were on, and the wind as you have stated, on which side according to the rules of navigation, should you have passed the Grey Eagle?

Ans. Our place was to keep right straight on our business, and not mind her at all. It was for her to pass us.

Ques. Was that what you did do?

Ans. Yes.

Ques. Did you attempt to pass the Eagle on the port side?

Ans. No.

Ques. Did you make any effort to do so?

Ans. No.

Ques. You have stated that shortly before the collision, the Grey Eagle kept away about four points. If that is so, how was it, if you kept your course, she could strike you on the starboard quarter?

Ans. When she kept off she headed right for our bows. The captain of the Perseverance told the men at the wheel to put it hard up. We did so, and that swung us off, and pitched the Grey Eagle right into our quarter.

Ques. How long had the captain of the Perseverance been on deck before he gave this order?

Ans. Very near twenty minutes.

Ques. What order had he given, if any, after coming on deck, before he gave this order?

Ans. He asked the man at the wheel how she was going, and he answered east and by south; he replied, let her go so.

Ques. What makes you suppose, and according to what rule of navigation is it that you say, that you were to keep your course without regard to an approaching vessel, when both her lights were visible?

Ans. Her lights were not both visible but for an instant, ten or twelve seconds.

35 Ques. By what rule of navigation do you claim that you were to keep your course without reference to the Grey Eagle, in the direction you were approaching her?

Ans. I cannot tell the rule, but I can tell you why it is. We were

on our starboard tack, close haul on the wind. I say a vessel on her starboard tack is to keep along about her business.

Ques. According to the old lights, what light did a vessel show on her starboard tack?

Ans. A red light.

Ques. According to the new system of lights, what light does a vessel show on her starboard tack?

Ans. A green light.

Ques. Did your vessel, in approaching the Grey Eagle, show either a green or a red light?

Ans. No.

Ques. How could the Grey Eagle know what tack you were on, unless you showed a light indicating the tack?

Ans. By the wind.

Ques. How?

Ans. They claim to say that they saw our light fifteen or twenty minutes before the collision, and it kept nearing them. I say that that shows we were not on our port tack crossing the straits.

Ques. Where do you find any such claim as that, and who says it?

Ans. In their testimony the ship carpenter says he saw it ten or fifteen minutes before the collision.

Ques. Is that all he claims in his testimony?

Ans. No; there are five or six sheets full of it.

Ques. Has that testimony all been read to you?

Ans. It has.

Ques. When?

Ans. Last week, Thursday, I guess.

Ques. Who else was present when that testimony was read over?

Ans. Capt. Deott and the rest of them; Michael Brown and John Doyle.

Ques. Don't they state in that testimony, that they supposed your light was a stationary light for some time?

Ans. I don't recollect that.

36 Ques Don't they state in that testimony that they took your light for a light on shore, or a light of a vessel at anchor?

Ans. They did say so.

Ques. If on board the Grey Eagle they had seen a white light approach them, how could they tell when that light was not a proper light to carry on the starboard tack, that it was a vessel on the starboard tack?

Ans. They could not by the light.

Ques. Might not and would not a vessel hauled up all she could, heading to windward, show her binnacle light?

Ans. No.

Ques. Why not?

Ans. If she had her stern to the Grey Eagle she would, but not otherwise.

Ques. How would it be about her cabin light?

Ans. She could not have seen our window light, if the vessel had

a poop cabin; and the vessel was where she could see her cabin, she would.

Ques. How were you heading when the vessels struck?

Ans. I could not say positively, but think we were heading north-east and by east.

Ques. Will you give me a list of the clothing of the master?

Ans. I know he had a trunk, and that full of underclothing and shirts. He had also in a bureau drawer a new broadcloth suit throughout, pants, coat, and vest. He had four pair of good boots. He had three caps, one a fur one, an oil-skin coat, pants, and south-wester. He had four coats that had been worn some, four or five pair of pants, three or four vests. I can't think of anything else.

Ques. Can you give the value of these respective articles?

Ans. I could not say into twenty dollars what they were worth.

Ques. Did you ever see inside of his trunk?

Ans. I did.

Ques. Did you overhaul his shirts?

Ans. No; I was in his cabin one day, where the cook was working, and she said that the captain had a splendid set of under-
37 clothes, and I looked and saw he had.

Ques. Were you ever in the clothing business?

Ans. No.

Ques. What was your business before going to sea?

Ans. Going to school.

Ans. If you were never in the clothing business, how do you form your judgment so as to swear to the value of those articles in dollars and cents?

Ans. By the few articles I have bought myself.

Ques. Were any of those articles of the captain's new, except the broadcloth suit?

Ans. I could not say whether the under clothing were new, but they were good. He had two pair of pants, a vest, and a coat that he got this season, and the rest of his clothing was good.

Ques. Is the first mate here?

Ans. No; not to my knowledge.

Ques. What is his name, and where does he live?

Ans. His last name is Cucker; his first I don't know. I don't know where he lives. I guess he has not got any home.

Ques. Will you give a list of his wardrobe?

Ans. Overcoat, fifty dollar new one; another overcoat, bought last winter. I should say two new suits, pants, coat, and vest; four or five pair of boots, two pairs new. He had oil clothes, pants, coat, and hat. He had two or three suits of working clothes, pants, coat, and vest. He had a trunk with a good deal of underclothing in it, but how much I don't know. I guess that is all he had.

Ques. Can you swear to the cash value of this wardrobe of the first mate in dollars and cents.

Ans. I cannot. I could swear to within fifteen or twenty dollars of what they were worth.

Ques. How much were they worth?

Ans. Two hundred and fifty dollars; overcoat, fifty dollars; overcoat, twenty; two suits of clothes, ninety dollars; boots, thirty dollars; shirts and underclothing, thirty dollars; working clothes, forty dollars; oil clothes, six dollars; making two hundred and sixty-six dollars.

Ques. How long had he got this coat valued at fifty dollars?

Ans. A few days before we sailed on this last trip. He told
38 me himself, and I could tell by the quality of the coat that it cost fifty dollars.

Ques. Give us your own clothing?

Ans. Two overcoats, worth forty dollars; a suit, coat, pants, and vest, worth thirty-five dollars; boots, twenty dollars; shirts and underclothing, twenty-five dollars; working clothes, twenty dollars; oil clothes, six dollars.

Ques. Give the value of the clothing of the crew.

Ans. One hundred and seventy-five dollars each; there were five men on board, making eight hundred and seventy-five dollars.

Ques. Give us the value of the captain's outfit.

Ans. Two hundred and twenty-five dollars.

Ques. How many points did you have the wind free when you were on your course?

Ans. A point to a point and a half.

Direct resumed:

Ques. You have stated that you were on the William G. Grant, before you sailed on the Perseverance; who commanded the William G. Grant?

Ans. Capt. Deott, who commanded the Perseverance; the reason why I left the William G. Grant was that she was sold, and Capt. Deott took me with him on the Perseverance.—(Witness states that he left out the value of the captain's hats and caps.)—I should say they were worth twelve dollars.

ALFRED LIST.

JOHN DOYLE, being duly sworn, deposes and says:

I am thirty-three years of age. I am a sailor; I have been twelve years sailing; I have been for the last four seasons mate and second mate; I have sailed on the lakes all that time; I sailed on the Perseverance on her last trip, before the mast; she was going to Ogdensburgh from Chicago at the time of the accident. She left Chicago on Saturday, the nineteenth of November, I think. We went from Chicago along the west shore near to the end of the
39 lake, and then struck out for the Manitous. The lights were on the vessel at twelve o'clock on Sunday night when I went down. On Monday morning they were gone; I was on the watch the night of the collision. My watch took place at twelve o'clock, and I had been on the look-out about two hours. The collision took place in the Straits of Mackinac, near Sheboygan light; it must have been pretty near two o'clock at the time. I saw the light of the Grey Eagle about twenty minutes before she collided with us; she was a point to a point

and a half to windward of us; I saw a green light first, about two minutes after I saw the red light, and thought he must have been steering wildly; I did not report the light, as it was so far to windward; I looked ahead to see if it was us was steering wildly, and I saw Sheboygan light, and that we were going steady. The Sheboygan light was to leeward of the lights of the vessel I saw; her red light just flashed for about three seconds; I did not pay any attention to the light for five or ten minutes more; I walked the deck back and fore and then looked again, and saw the light coming right for us; I turned round to call the captain; as soon as I turned round I saw the captain standing beside me; she was then four points on our weather bow; she was then five or six lengths of herself from us; I turned round to call the captain's attention to him, and with that the captain and second mate were close to me. Then the captain holload to them, "Keep your luff," as loud as he could, and I holload luff a dozen times loud enough to waken the men in the forecastle of the Grey Eagle. She still kept comming on to us, and I should think within fifty feet of our bows. Our captain holload to the man at our wheel, "Hard up;" with that our head paid off, and she struck us in the stern, which if we had not paid off, she would have struck us in the bows; she struck us hard and with all the force she had. She sunk our vessel right away, and we jumped on board the Grey Eagle.

Ques. From the time the Grey Eagle shut off her red light up to the time that you noticed her bearing down on your weather bow, did you pay particular attention to her lights?

Ans. No; after she shut out her red light, and showed her green light again, I paid no attention to her; the next I saw was a red and green light coming square on to us.

Ques. How far was she from you when she shut off her red light the first time?

Ans. About a mile. It was from five to ten minutes after that, that I saw both her lights coming down on us.

Ques. Why did you not keep your eye on that light from the time you first it?

Ans. Because I thought the vessel was all right, and had no idea of the vessel coming near us.

Ques. If she had kept on the course that she was on when she first shut off her red light, how would she have passed you?

(Objected to as immaterial.)

Ans. She would have passed us to the windward, all clear; we could not have touched at all.

Ques. If she had luffed when hailed by the captain, would she have touched you?

(Objected to as immaterial.)

Ans. No.

Ques. Was there anything saved from the Perseverance?

Ans. No; I lost my clothing.

Ques. What was the value of the clothing you lost?

Ans. I lost one hundred and forty-eight dollars' worth of clothing; a silver watch, worth $80; a chain, worth $5; a key, $2,50.

Ques. After you first went on board the Grey Eagle, did you have any conversation with any one of the officers of the Grey Eagle about the collision, and if so, with whom?

Ans. I enquired who was on the look-out. I had no conversation with any particular person when I went on board. I asked, "Which of you men was on the look-out; did you not see us?" I could not find who was on the look-out. They all said they did not see us. A man came down to the forecastle with some clothes for me; I
41 was one of those taken out of the water. I asked him where he was; he said he was at the wheel.—(The respondents' proctor here objects to the statement of the witness, between himself and the crew of the Eagle, in the absence of her officers or owners.)—I asked him did he see us or hear us. He said he heard us, but did not see us. I asked him how he was steering; he said he did not know. I asked him where was the mate, and he said he was aft; he said the mate said nothing to him, and he knew nothing; and he also said that they were near running down a vessel the night before in Saginaw bay. He said they all expected to do mischief before the got to Milwaukee. I went forward to get my clothes, but before I got there she went down, and I had to swim to the Grey Eagle, and was hauled on board; the wind at the time of the accident was southerly. We were carrying fore and aft sails at the time, both of them reefed single.

Cross ex:

Ques. You say that all the men on board the Grey Eagle said that the mate did not know anything. Now give me the name or names of the person or persons who told you?

Ans. I did not know any of their names, and would not know any of the men if I saw them now.

Ques. Did any of the officers of the Grey Eagle say so to you?

Ans. I think it was the second mate stated to me, that the first mate was nothing but a bull-head.

Ques. Are you as certain that the secod mate of the Grey Eagle told you that the first mate was a bull-head, as to your course that night?

Ans. I am not certain that it was the second mate, but think it was him.

Ques. Who else and how many of the crew of the Grey Eagle told you that the mate was a bull-head?

Ans. There were three or four of them saying so in the forecastle; I think I would be safe in saying that the whole of them said so; I am sure three or four of them said so.

42 Ques. Were they altogether or separate when they told you so?

Ans. They were down in the forecastle, both crews were together then.

Ques. Do you know how many years the mate of the Grey Eagle has acted as first and second mate on these lakes?

Ans. I know nothing about it.

Ques. You state that when the Grey Eagle first shut out her red light she was about a mile from you, and that you did not observe her again until she was within four or five lengths of herself from you; was there anybody else on the look-out besides yourself?

Ans. Not forward.

Ques. When the Grey Eagle shut out her red light about a mile distant from you, who had command of your deck?

Ans. The captain and second mate.

Ques. Was the captain on deck or below when the Grey Eagle first shut out her red light?

Ans. I could not tell; I never missed him off the deck at all.

Ques. Did you see him go below?

Ans. No.

Ques. Did you see him at all after your watch was set until you turned round to call him?

Ans. I did not, but I heard him.

Ques. When did you hear him?

Ans. I heard him about half past twelve.

Ques. When did you next hear him?

Ans. When he called on the Grey Eagle to luff.

Ques. How far was the Grey Eagle from you then?

Ans. About four or five lengths of herelf.

Ques. Would you consider it quite safe to be navigating the straits without a rudder?

Ans. No.

Ques. What kind of anchorage is there in the straits?

Ans. Tolerably good.

Ques. What lights do vessels generally show at anchor?

Ans. A white light. A white generally indicates that the vessel is at anchor.

Ques. What do you mean by generally there, is it not an absolute and prescribed rule?

Ans. I have seen some that did not.

43 Ques. Under what circumstances have you seen a vessel at anchor without a white light?

Ans. I have seen a vessel this fall without it. It might be near daylight, and they might not think it worth while to change, or they might not have a white light.

Ques. You have stated that you had a white light on board the Perseverance, that you had neither a red nor green light, that there was good anchorage in the straits. Did you have any anchors and chains on board the Perseverance?

Ans. Yes.

Ques. Were your anchors and chains in a working condition?

Ans. They were.

Ques. Then why did you not come to anchor until daylight, and show your white light, instead of sailing down the straits under false colors to entrap your friends and neighbors?

(Objected to as being improper to ask a sailor before the mast.)

Ans. Ask the captain. I had not charge of her.

Ques. What do you mean by "ask the captain?"
Ans. Because he had charge of the vessel.

Direct resumed:

Ques. How long did you remain on the Grey Eagle?
Ans. From two o'clock until 8 or 9 o'clock the same morning. The propeller Winslow came and took us all off.

JOHN DOYLE.

MICHAEL BROWN, being duly sworn, deposes and says:

My age is twenty years; I am by profession a sailor; I live at Ogdensburgh, in the State of New York; I came from Ogdensburgh here to testify in this cause; I have sailed, off and on, the last six years; I have sailed before the mast; the first of my sailing was on propellers. I was at the wheel at the time the schooner Grey Eagle ran into us and sunk us in the Straits of Mackinac; I had been at the wheel about one hour and three quarters; I saw the Grey Eagle's light from a point to a point and a half on our weather bow; I saw her light from eight to ten minutes before she collided with
44 us. When I first saw her lights, I saw a red and green light; then all at once her red light was shut out; I was steering east by south at the time. The wind was about south, or to the eastward of south if anything. The Grey Eagle was about a mile from us when she first showed her red light; I kept a look-out on her light; she was to windward of us, and was going northwest by west, as near as I could judge. She did not keep her course steady; I could notice her swinging; I kept my course steady; I could not say that she changed her course until she was within four or five points off our weather bow, when she kept off; I heard the captain, second mate, and the man on the look-out sing out to the Grey Eagle to keep her luff; they sung out from five to ten seconds. The captain of the Perseverance sung out to me to put my wheel hard up, and I did so. The Perseverance got off about four points when the Grey Eagle hit us in the starboard quarter, about twenty feet from our stern; we sunk in about two minutes after her hitting us; we lost every thing; I got on board of the Grey Eagle; we were not sinking right off; I jumped down on our deck again and ran forward for my clothes; I got hold of my bag and was running aft, and I ran into water up to my arms; I made the best way for a chain of the Grey Eagle and got hold of it, and sung out for a rope. They were passing down ropes, but I could not get hold of them; I again sung out and got hold of a rope; they then hauled me on board of the Grey Eagle; after I got on board, I went aft to the cabin; our captain told me there was a good fire in the forecastle; I went forward and got dried.

Ques. What was the value of the clothing you lost by the Perverance?

Ans. About a hundred and twenty-six dollars.

Q.. What sail were you carrying at the time the collision occurred?

Ans. Foresail, single-reefed; mainsail, single-reefed; fore staysail,

jib, and I think we were carrying the flying jib, but am not certain.

45 Q. If the Grey Eagle had kept on the course she was on when you first saw her, how would she have passed you?

Ans. She would have passed to windward of us, three or four lengths of herself.

Ques. How far was she from your vessel when she bore away?

Ans. About four or five lengths of herself, off our weather bow.

Ques. How far to the windward was she when she kept away?

Ans. She was about four points off our weather bow.

Ques. If just at that time, would it have been safe for you, in your opinion, to have passed to the windward of her?

(Objected to generally, and further that they ought not to have deferred just to that, without passing on her proper side.)

Ans. No.

Ques. Having seen the Grey Eagle at some distance, why did you not port your helm, to pass her on the port side?

Ans. Porting my helm would endanger me running right into her.

Ques. Why did you keep your course?

Ans. Because by doing so we would keep clear.

Ques. If the Grey Eagle had luffed when hailed by the captain, would there have been any difficulty in passing her clear?

(Objected to generally, and that it is an improper and immaterial question in view of the fact that the Grey Eagle had nothing whereby to determine the position of the Perseverance, and secondly, that in the then instant of the collision, occasioned as it was by the Perseverance's sailing without a proper light, the Grey Eagle had to determine her course as best she could under the circumstances.)

Ans. There would be no difficulty; she would have passed to the windward of the Perseverance.

Ques. At the time the Grey Eagle bore away, was there any difficulty in seeing her sails?

Ans. I could see the Grey Eagle's sails plain; about half a minute before that I could notice her sails.

Ques. After you first went on board the Grey Eagle, did you have any conversation with the officers or men with regard to the Grey Eagle, and how it occurred?

Ans. I did not have any conversation with them in regard to the vessel; I heard a conversation between one of our men and

46 the man at the Grey Eagle's wheel.

Ques. State what that conversation was.

(Objected to as immaterial and inadmissable.)

Ans. I could not state which of our men it was; one of our men asked him what he did at the wheel. He said he did nothing but stand at the wheel. He said that the mate stood there alongside of him. He said it was not his business to move the wheel as long as the mate stood alongside of him.

Cross-ex:

Ques. You stated you first saw the Grey Eagle about a mile off; what enabled you to see her?

Ans. Her lights.

Ques. By seeing a red and green light and knowing the direction of the wind, could you tell her course?

Ans. I could pretty near.

Ques. How could you tell?

Ans. I could tell by her lights.

Ques. Was there anything about her but her lights that enabled you to tell?

Ans. That was all.

Ques. Did you see her lights or light from that time up to the collision?

Ans. I saw a green light about two or three seconds after I saw both of them. I saw her green light from that time, and then saw both her lights. I saw both her lights for above half a minute. Her green light was shut off, and then I saw nothing but her red light until she ran into us and sunk us.

(Respondents' counsel repeats the question.)

Ques. From the time you first saw the Grey Eagle's lights a mile distant. was there any instant between that time and the time of the collision in which her lights or one of them was not apparent?

Ans. I could see one or other or both all the time.

Ques. You have already stated that when she showed her red and green light, when about a mile distant, and knowing the direction of the wind, you could pretty nearly tell her course. Could you as well tell her course when she showed only her green light?

Ans. Not as well as when she showed both lights.

47 Ques. Could you at all?

Ans. Not for certain.

Ques. Why not, and what is the object of the different colored lights?

Ans. By showing two lights a point off our weather bow, and we steering east by south, she must be coming direct for us; when showing only the green light, she must be keeping up from us. The object of the lights is to show the general course of a vessel in the night-time.

Ques. Did you govern your approach to the Grey Eagle by the lights she showed, or how otherwise?

Ans. I governed her by the compass of the Perseverance.

Ques. With or without the lights of the Grey Eagle?

Ans. I kept looking at the lights and at our compass, and governed the Perseverance by the compass.

Ques. Why did you keep looking at the lights of the Grey Eagle if you governed the Perseverance entirely by her compass? State what you mean.

Ans. I could look off the compass for a second at the Grey Eagle.

I had no regard for the course of the Grey Eagle; I steered my course without reference to the Grey Eagle.

Ques. Why did you so steer?

Ans. I so steered because I had such orders from the captain. He told me to steer east and by south.

Ques. Would you, under orders from the captain, have kept right on your course if you had run down half a dozen vessels?

Ans. Yes.

Ques. What do you do under such cirumstances, when the captain is in the cabin drying his clothes?

Ans. I go by the second mate's orders.

Ques. You have stated that when you first saw the lights of the Grey Eagle she was about a mile distant from you, and that you saw both her red and green light, bearing about a point or a point and a half on your weather bow; would she not, in that position, have been dead ahead of your vessel?

Ans. No; she could have swung and showed both of her lights.

Ques. How much would she have to swing to show both her lights?

Ans. She would have to swing about a point.

Ques. If the Grey Eagle's red and green light were both seen from on board the Perseverance when about five miles distant, and
48 again seen about a mile distant, bearing, as you have stated, where would you place her as regards your vessel?

Ans. I do not know anything about her five miles off; when I saw her she was about a mile off.

Ques. If you saw the Grey Eagle's red and green light a mile distant, bearing a point or a point and a half on your weather bow, and these lights were not both made apparent by swinging, then how far from dead ahead would you place her?

Ans. About half a point to a point from dead ahead.

Ques. If both vessels then so placed had kept right on their course, how would they have met or passed?

Ans. I think the Grey Eagle would have passed a length or a length and a half to windward of the Perseverance.

Ques. If, when you saw the Grey Eagle's lights, red and green, a mile distant, bearing a point or a point and a half on your weather bow, and she had kept that course, and you had ported your helm, where would that have carried you?

Ans. We would go right around; we would go in the opposite way from where we were going.

Ques. Did you have your sheets all close-hauled aft?

Ans. They were close-hauled on our starboard tack; there might have been a foot or so.

Ques. When you meet a vessel, head on, or nearly head on, do you know what to do to pass her on the port side? and if yea, what?

(Objected to, as the witness has to go by the orders of the commanding officer, and not to disobey orders.)

Ans. I know what to do, if the captain gave me orders. It is to port; that is, according to how you are going.

Ques. Is that all you know or can state in answer to the question put to you?

Ans. I don't understand the questions.

Ques. What don't you understand?

Ans. I don't understand seeing a vessel right ahead and no lights; I don't know how to pass her, without orders from the captain.

Ques. What do you mean by seeing no lights?

Ans. I don't know what you mean.

49 (First question repeated.)

Ans. Put our wheel aport.

Ques. Then why did you answer me before that if you had ported your wheel, when you saw the red and green light of the Grey Eagle a mile off, bearing a point or a point and a half on your weather bow, that if you ported your helm it would carry you across the straits? What do you mean?

Ans. If I ported my helm, and did not steady her, she would go right across the straits.

Ques. Suppose you ported her helm and did steady her?

Ans. If I fetched her up any from the way she was going, she would be in the wind. If I fetched her up a point she would be close-hauled to the wind and could not go any higher.

(Farther examination adjourned until to-morrow morning, Dec. 28th, at 10 o'clock a. m.)

JAMES MITCHELL.

Ques. How many points did you have the wind free?

Ans. About a point, as near as I can judge.

Ques. Did you did not have the wind at least two points free, according to your own statement of your course and the direction of the wind?

Ans. Not to my knowledge.

Ques. With the Grey Eagle a mile distant from you, showing both her red and green light, bearing on your weather bow, as you have stated, you having the wind a point free, if you had ported your helm as far as you could with the wind a point free, and steadied her, how far would you have gone to the windward of the Grey Eagle if she had kept on her course?

Ans. I think we would run right into each other, as near as I could say.

Ques. You stated, in answer to a former question, if you had ported your helm and had not steadied her, you would have run right across the straits; you now swear that if you had ported your helm and steadied her, you would have run right into the Grey Eagle; what was the distance between the Grey Eagle and the south shore of the straits?

50 Ans. I don't know what the distance was.

Ques. Have you any idea at all of what the distance was?

Ans. I could not tell what the distance was.

Ques. Do you know how wide the straits are?

Ans. I could not say how wide the straits are.

Ques. Do you know anything as to where you were that night as regards the straits?

Ans. I know we were pretty near the middle of the straits.

Ques. How do you know that?

Ans. By the distance on each side, as near as I could judge.

Ques. Do you know the width, or about the width, of the straits?

Ans. I do not know.

Ques. Will you give me your idea as to the width of the straits at that point; that is, your best judgment on the subject?

Ans. I could not give it.

Ques. Are they one mile or a thousand?

Ans. To my best judgment the are about six or eight miles.

Ques. Why did you not so answer me about ten questions back, when you were asked directly, without equivocating?

Ans. The reason I did not answer you was because I did not know how far it was across the straits?

Ques. Did you not know then as well as you do now?

Ans. I had no idea about the width of the straits, but as you asked whether it was one mile or a hundred, I thought it must be inside of that, and I guessed at eight.

Ques. If the straits where you were, while a mile distant from the Grey Eagle, were five or six miles wide, and you about midway in the straits, with the Grey Eagle a mile from you, showing both the red and green light, bearing on your weather bow, as before stated, you having the wind at least a point free, could you not, by porting your helm, steer between the south shore of the channel and the Grey Eagle without running into the south shore or the Grey Eagle, the room for you to pass being at least two miles in breadth between the Grey Eagle and the south shore?

Ans. I think we could not.

Ques. Tell us why not.

Ans. The Grey Eagle coming on to our weather bow from
51 a point to a point and a half, and showing both lights, I do not think we could pass between the south shore and her without running into her.

Ques. The question put to you was, seeing both the lights of the Grey Eagle a mile distant and ahead of you, bearing as they were; you avoid the question by stating that if they bore a point to a point and a half on your weather bow, you could not pass; now do you swear that you could see both the red and green light if the Grey Eagle was as far to windward as a point and a half, or what do you mean by your answer?

Ans. I could see them at a point and a half when I first saw her; whether she was in the swing or not I could not say.

Ques. Will you now answer both of the last preceeding questions, or do you refuse to answer? If you want to answer them, answer them. If you don't understand them, say so, and have them re-read to you.

(Object to the mode of examining the witness; that the witness

has answered the questions put fairly, candidly, and with perfect propriety, and that the counsel has no right to attempt to browbeat the witness on examination.)

Ans. I have answered them both, to the best of my knowledge.

Ques. Can you see any vessel's both lights at the same time when the lights are varying a point and a half on either of your bows?

Ans. If she was swinging any you could see them.

Ques. If she was not swinging, then could you see them?

Ans. I think not at a point and a half.

Ques. How far from dead ahead could you see both the red and green light of an approaching vesse if she was not swinging?

Ans. Might see them from half a point to a point, to the best of my judgment.

Ques. Do you swear that you could see them half a point from dead ahead?

Ans. To my best judgment, I could.

Ques. Could you see them, according to your best judgment, over half a point?

Ans. I could, to the best of my judgment, see them a point.

52 Ques. In the position of your vessel and of the Grey Eagle, what was there to prevent you, when a mile distant from the Grey Eagle, porting your helm and passing to windward of her?

Ans. By porting our helm we could lay about a point higher, and we had not the wind to lay higher, we would have run right into her, to my best knowledge.

Ques. Do you give that opinion as a sailor, or is it mere speculation with you?

Ans. I give that opinion as a sailor, which I am.

Ques. You sailing east by south, the Grey Eagle west by north, you a mile distant and to the westward of the Grey Eagle, if you had been carrying a red and green light in the proper position, what light would you have shown the Grey Eagle?

Ans. We would have shown a green light.

Ques. If you in that position had ported your helm a point, what light would you have then shown the Grey Eagle?

Ans. We would show our green light and a red light.

Ques. If you had had a green and red light on board your vessel, and so shown them, would that not have indicated or shown to the Grey Eagle your position and course?

Ans. It would, to the best of my knwledge.

Ques. Without either the green or red light on board the Perseverance, she carrying nothing but a white light, how could the Grey Eagle determine the course of the Perseverance, or her position?

Ans. I don't know how she could, except she could by the wind.

Ques. How could she by the wind tell whether the Perseverance was under weigh or not?

Ans. The wind blowing from the southward, a vessel bound down the straits—the straits run about east and west—a vessel going down must be going east by south; a vessel coming up must know pretty

near how the vessel is going coming up, by the wind. She could not tell by the wind whether she was under weigh.

Direct resumed:

Ques. How could the Grey Eagle have known that you were not at anchor?

(Objected to as inadmissible, because they have told us, in express terms, by the white light, they were at anchor.)

53 Ans. By us being in the middle of the straits; a vessel don't often come to anchor in the middle of the straits; she could have told by our canvass; a vessel laying at anchor has her canvass in, generally.

Ques. How far could she have seen your canvass that night before the collision occurred?

Ans. About a quarter of a mile, as near as I could state.

Ques. If she actually saw you in motion she would know that you was not at anchor, would she not?

(Objected to as leading, and second, because it is a regular Irish bull.)

Ans. Yes.

Cross-ex:

Ques. How could the Grey Eagle know, a mile distant, that you were in the middle of the straits?

Ans. I could not say how she could tell.

Ques. Was there any moonlight that night?

Ans. I don't remember of any.

Ques. Were there any clouds?

Ans. A few that I could see.

Ques. Was it light or dark?

Ans. It was neither; you could see quite a distance.

Ques. Can you tell, by seeing the sails of a vessel at night at a distance, which way she is moving? If so, how?

Ans. If I could see the sails I could tell. I could tell by the wind whether she was on her port or starboard tack or running free.

Ques. Do you swear that on that night you could see the sails of a vessel a quarter of a mile off, so as to tell which way the vessel was steering, if she carried no lights?

Ans. I could not tell a quarter of a mile off which way she was steering, but I could see her sails.

MICHAEL BROWN.

ALFRED LIST recalled by claimants.

Ques. What sail were you carrying at the time this collision occurred?

(Objected to, as the witness has been examined already as
54 to the point, and two other witnesses of the same crew have since been examined on the same point in his presence.

Question waived.)

Ques. In your first examination, in answer to a question put by Mr. Van Dyke, on the eleventh page, as taken down by the commissioner,

you stated at the time of the collision your mainsail and foresail were not reefed. I now ask if you were mistaken in that statement and how you came to say so at the time.

(Objected to same as last above.)

Ans. It was a mistake of mine; the reason I said so was I had forgotten that they were reefed.

Ques. Do you now recollect if they were reefed; and if so, how many reefs they were in?

(Same objection as last above.)

Ans. I do recollect they were reefed; they were single-reefed.

ALFRED LIST.

The said witnesses, Alfred List, John Doyle, and Michael Brown, were each first duly sworn, and their depositions, after being reduced to writing, were read over to them, and were signed by them respectively, in my presence.

Dated Milwaukee, June 23d, 1865.

JAMES MITCHELL.

United States district court for the district of Wisconsin.

JOHN GREENING AND OTHER
vs.
THE SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture.

It is hereby stipulated and agreed that the depositions of John Tod, Edward Collins, William Thomas, and ——— Jem, may be taken before Jasper E. Williams, esq., at his office in the city of Cleveland and State of Ohio, on the interrogatories and cross-interrogatories hereunto annexed; that the issuing of a commission is hereby
55 waived; that the said deposition, when taken, shall be returned to the clerk of the district court of the U. S. for the district of Wisconsin, at Milwaukee. All objections to said deposition are hereby waived, except for irrelevancy or incompetency. It is further stipulated that the deposition of other witnesses not named herein be taken in may answer to the said interrogatories before the said Jasper E. Williams.

FINCHES, LYNDE & MILLER,
Proctors for Libellants.
EMMONS & VAN DYKE,
Proctors for Re pondents.

United States district court for the district of Wisconsin.

JOHN GREENING AND OTHERS
vs.
THE SCHOONER GREY EAGLE, HER BOATTS, tackle, apparel, and furniture.

Interrogatories to be propounded to James Tod, Edward Collins, William Thomas, and ——— Jum, witnesses to be produced, sworn, and examined on the part of the libellants.

1st interr. What is your name, age, and occupation, and where do you reside?

2nd. interr. How long and in what capacity have you sailed, and upon what waters ?

3rd int. Where was you on the night of the 23d of November and the morning of the 24th of November, 1864 ?

4th int. From what direction was the wind on that night, and from what direction was the wind between two and three o'clock of the morning of the 24th of Nov., 1864 ?

FINCHES, LYNDE & MILLER,
Proctors Libellants.

United States district court for the district of Wisconsin.

JOHN GREENING AND OTHERS
vs.
SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture.

56 Cross-interrogatories to be propounded to the witnesses named in the annexed interrogatories by Jasper E. Williams, esq., of Cleveland, and State of Ohio, the commissioner agreed upon by the respective parties to take the deposition of said witnesses upon the interrogatories and cross-interrogatories propounded and annexed.

First cross-interrogatory. If in answer to the third interrogatory you state where you were, state the exact locality in which you were between two and three o'clock on the morning of the 24th of November, 1864, and what you were doing at the time. If you were on board a vessel, state upon what vessel; whether you were on deck or below; in what capacity you were on board; what course was the vessel steering; under what canvass was she sailing; and at what speed.

Second cross-interrogatory. If in answer to the 4th interrogatory, you state the direction of the wind between 2 and 3 o'clock a. m., of November 24th, 1864, and or at any other time, state truthfully and fully at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

EMMONS & VAN DYKE,
Proctors for Respondents

JOHN GREENING AND OTHERS, plaintiffs,
vs.
THE SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture, defendants.

Deposition of three witnesses taken before me, Jasper E. Williams, special commissioner, within the county of Cuyahoga, in the State of Ohio, on the 15th day of February, and the 12th day of March, A. D. 1865, between the hours of 9 a. m. and 6 p. m., in said county, pursuant to the annexed stipulation, to be used in evidence on behalf of the libellants, in the said action.

JAMES TODD, being duly sworn, testifies as follows:

In answer to the first interrogatory:

My name is James Tod; my age is 31; I am a seaman by occupation, and reside in Buffalo, New York.

In answer to the second interrogatory:

57 I have sailed sixteen years; I was nine years seaman, four years mate, and three years master; I sailed four years upon the Atlantic ocean, and twelve years on the lakes.

In answer to the third interrogatory:

On the night of the 23d Nov., 1864, I was on Lake Michigan; at 7 o'clock that night I was off Milwaukee; at 1 o'clock of the morning of 24th November, I was off Sheboygan; at 8 o'clock that morning I made sight of Big Point Sable, on the Michigan side.

In answer to fourth interrogatory:

The wind was from southeast by south on that night, and from the same direction between two and three o'clock of the morning of November 24th.

In answer to the first cross-interrogatory:

As near as I could judge, we were, between 2 and 3 o'clock of the morning of November 24th, off Manitowoc, about the centre of the lake between Manitowoc and the east shore, about thirty or thirty-five miles from shore. My vessel was sailing from Chicago toward the foot of the lake at the rate of about ten miles an hour. I was on the schooner Sea Bird, on deck, and in command of the vessel. The vessel was steering north by east one-half east, under full sail, and at about ten miles an hour.

In answer to second cross-interrogatory:

The direction of the wind was from south-southeast during the evening of November 23d, until 10 o'clock, when it veered easterly one point, and was southeast by south from 10 o'clock that evening, until about 8 o'clock of the morning of November 24th: I was on deck mostly all night, and wholly from 12 o'clock midnight to 4 o'clock in the morning, and while on deck carefully observed the course of the wind, observing the compass frequently. I also observed the fly frequently and kept myself advised as to the course of the wind. We were on our course steering north by east one-half east from 10 o'clock in the night of the 23d until 8 o'clock on the morning of the 24th. On leaving Chicago the course I took, north by east one-half east, carried me to the eastward well out into the lake, so that at about 1 o'clock I was about fifteen or twenty miles from the west shore, and
58 about 120 miles from Chicago.

JAMES TODD.

EDWARD COLLINS, being duly sworn, testifies as follows:

In answer to the first interrogatory:

My name is Edward Collins; my age is 26; I am by occupation a seaman; and reside at Buffalo, New York.

In answer to the 2d interrogatory:

I have sailed ten years. I was five years a seaman, three years mate and two years master; and have sailed on the lakes.

In answer to the 3d interrogatory:

On the night of November 23d, at half-past seven o'clock, I passed Milwaukee light; at two o'clock on the morning of November 24th, I was about abreast of Manitowoc, and, as near as I could judge, about in the middle of Lake Michigan. At about 9 o'clock that morning I made the east shore abreast of Big Point Sable.

In answer to the 4th interrogatory:

On the night of the 23d, about 11 o'clock, the wind veered south-east by south. I jibed ship and hauled her up from her course north one-half east to north by east one-half east. The wind remained in that direction till about 9 o'clock on the morning of the 24th, and was from that direction between 2 and 3 o'clock of the morning of the 24th.

In answer to the first cross-interrogatory:

Between 2 and 3 o'clock I was about abreast of Manitowoc, and about midway between the east and west shores. My vessel was sailing from Chicago toward the foot of the lake, averaging ten knots an hour. I was on board the brig Mechanic. I was on deck from 6 o'clock on the evening of the 23d until 5 o'clock on the morning of the 24th, with the exception of a few minutes. I was master and in command of the vessel. The vessel was steering north by east one-half east, under full sail, excepting the main gaff-topsail, and at about ten knots an hour.

In answer to the 2d cross-interrogatory:

During the night of the 23d, until about 11 o'clock, the wind was sout-southwest. From about 11 o'clock during the remainder
59 of the night, and on the morning of the 24th, the wind was southeast by south. During the night I looked at the compass and the fly as often as once in from fifteen minutes to half an hour. The night was dark, and I was particular and careful to observe the course of the wind. I sailed the land close aboard, about four miles off shore, down to Sheboygan, and then at about 10 o'clock kept her away all I could to north one-half east, and at 11 o'clock I jibed my mainsail over, and hauled up and shaped my course north by east one-half east. Sometimes the wind draws more off the land than out in the lake. I have truthfully and fully given my answers to the interrogatories and cross-interrogatories propounded.

EDWARD COLLINS.

JOHN JENNINGS, being duly sworn, testifies as follows:

In answer to the first interrogatory:

My name is John Jennings; age 35 years; a seaman by occupation, and reside at Milan, Ohio.

In answer to the second interrogatory:

I have sailed fifteen years. I was seaman five years, mate two years, and master eight years. I have sailed upon the lakes.

In answer to the third interrogatory:

At 9 o'clock of the night of 23d November, 1864, I was in the straits of Mackinac, near Waugoshanee light-house. I was opposite old Fort Mackinac at about 11.30 p. m., of that night; I passed the Sheboygan revolving light about twenty minutes after two o'clock on the morning of 24th November.

In answer to the fourth interrogatory:

During that night, the wind at 9 p. m., when I came around Waugoshanee light-house, was S. S. W., and remained from that direction about two hours, when it backed up to south-southeast. Just below old Fort Mackinac, the wind canted to southeast by south, and held that way about half an hour. It then backed up to south-southeast. It held about so the balance of the night. Between 2 and 3 o'clock on the morning of the 24th, the wind was about south-southeast, baffled a little once in a while to south by east. I knew the wind at that time was south-southeast by my vessel being close-hauled.

60 In answer to the first cross-interrogatory:

At 2 o'clock on the morning of the 24th I was about two miles above Cheboygan revolving light; at half-past two o'clock I was about a mile and a half below Cheboygan light, and at 3 o'clock I was about 5 miles below Cheboygan light. Between 2 and 3 o'clock I was about two miles from shore all the time. My vessel was sailing from Chicago and bound for Cape Vincent, sailing the ordinary course through the straits. We were sailing at the rate of about seven miles an hour. I was on the schooner Idaho, on deck, and in command of the vessel. The vessel was steering east by south between 2 and 3 o'clock, under full sail, and at about seven miles an hour.

In answer to the 2nd cross-interrogatory:

At 9 o'clock of the evening of 23d November, the wind was south-southwest. At about 11 o'clock it commenced backing up to south-southeast. At about half-past 12 o'clock, the wind canted to southeast by south. At about 1 o'clock it commenced backing up to south-southeast, and remained about so the balance of the night. At about half-past 2 o'clock it baffled about a point, but all the night from about 1 o'clock it was nearly south-southeast. I know this by being close-hauled. I was on deck off and on from 9 o'clock in the evening till 12 o'clock midnight, and was on deck steadily from 12 o'clock till 4 o'clock in the morning. While on deck I carefully observed the course of the wind, observing the compass and the fly frequently. I kept myself fully advised of the course of the wind while on deck.

J. JENNING, *Master*.

Certificate.

STATE OF OHIO, *County of Cuyahoga, ss:*

I, Jasper E. Williams, a special commissioner, residing in the city of Cleveland, in the county and State aforesaid, appointed under and by virtue of the foregoing stipulation, do hereby certify that James Todd, Edward Collins, and John Jennings were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by me in presence of the witnesses respectively, by each of whom they were subscribed in my presence, and were taken at the time and place in the annexed stipulation specified; that I am not counsel, attorney, or relative of either
61 party, or otherwise interested in the event of the above-mentioned suit.

In testimony whereof, I have hereunto set my hand this 12th day of March, in the year of our Lord one thousand eight hundred and sixty-five.

JASPER E. WILLIAMS.

United States court for the district of Wisconsin.

JOHN GREENING, libellant,
vs.
SCHOONER GREY EAGLE, respondent.

Personally appeared George Willey, proctor for John Greening, who, being duly sworn, doth depose and say, that he is proctor and agent for the libellants in the above-entitled cause, and that he verily believes that the testimony of Charles N. Deott, Charles F. Austin, and John Jennings is material and necessary for the said libellants in the trial of said cause; and the said Charles N. Deott and Charles F. Austin reside at Cleveland, and John Jennings resides at Milan, all in the State of Ohio, and more than one hundred miles from where the court is appointed by law to be held; and that Emmons and Van Dyke are proctors for respondents, and reside in the city of Milwaukee, Wisconsin.

GEO. WILLEY.

Subscribed and sworn to by George Willey, before me, this 13th day of January, 1865.

[SEAL.]

ROBERT E. MIX,
Notary Public.

Let Charles N. Deott, Charles F. Norton, and John Jennings, the witnesses named in the foregoing affidavit, be examined de bene esse before me accordingly, at my office in the city of Cleveland, Ohio, on Friday, the 20th day of January, A. D. 1865, at nine o'clock a. m.; and let four days' notice be given to Emmons & Van Dyke,
62 proctors for respondents.

Cleveland, Jan'y 12, 1865.

ROBERT E. MIX,
Notary Public in and for Cayahoga County, Ohio.

United States court for the district of Wisconsin.

JOHN GREENING, libellant,
vs.
SCHOONER GREY EAGLE, respondent.

CLEVELAND, *Jan'y* 13, 1865.

SIRS: You are hereby notified that Charles N. Deott, Charles F. Norton, and John Jennings will be examined de bene esse before me at my office, in the city of Cleveland, Ohio, on Friday, the 20th day of January, 1865, at nine o'clock a. m. of said day as witnesses for the above-named libellants, according to the acts of Congress in such case made and provided, at which time and place you are entitled by law to be present and put interrogatories to the said witnesses.

ROBERT E. MIX,
Notary Public Cuyahoga County, Ohio.

To EMMONS & VAN DYKE,
Proctors for the above-named Respondents.

STATE OF WISCONSIN, *Milwaukee County ss:*

James McAlister, being duly sworn, deposes and says that he served a notice, of which the above is a true copy, on the foregoing named Emmons & Van Dyke, at their office in the city of Milwaukee, on the 16th day of January, 1865, at 4½ o'clock p. m.

JAMES MAC ALISTER.

Sworn to and subscribed before me this 16th day of January, 1865.

JOHN M. HILL,
Notary Public Mil. Co., Wis.

63 UNITED STATES OF AMERICA,
Northern District of Ohio, Cuyahoga County, ss:

Be it remembered that on this thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five, George Willey personally appeared before me, Robert E. Mix, a notary public in and for Cuyahoga county, in the State of Ohio, duly commissioned to take affidavits and acknowledgments in and for said county, and made oath that he the said George Willey was proctor and agent in a suit then pending in the United States court for the district of Wisconsin, wherein John Greening and Charles N. Deott are libellants and the schooner Grey Eagle is respondent; and that the testimony of Charles N. Deott, Charles T. Norton, and James Jennings is material and necessary for the said John Greening and Deott, libellants in the trial of this cause, and to establish and maintain their action therein; and that the said witnesses reside as follows: Charles N. Deott resides at Cleveland, and the said Charles I. Norton resides at Cleveland, and the said James Jennings resides at Milan, all in the State of Ohio, and more than one hundred miles from Milwaukee, in the State of Wisconsin, where the court, at which he, the said George Willey, expected the said cause to be tried, is ap-

pointed by law to be held; and that Emmons & Van Dyke, proctors for respondents, reside at Milwaukee, in the State of Wisconsin, and that claimant resides more than one hundred miles from said ; and that it was material and necessary that the depositions of said witnesses thereto be taken de bene esse in this cause. And the said George Willey requests me that the said witnesses might be examined and their depositions de bene esse might be taken before me, according to the act of Congress in such case made and provided. Whereupon I ordered that the said Charles N. Deott, Charles I. Norton, and James Jennings should be examined de bene
64 esse before me, at my office in the city of Cleveland, in the State of Ohio, on Friday, the twentieth day of January, A. D. 1865, at 9 o'clock a. m. of said day, and that notice should be given to Emmons and Van Dyke, proctors for respondents, to the end that they might, if they should see fit, be present at the said examination and put interrogatories; and I having satisfactory proof that the said notice had been given and as well the said George Willey as the said J. H. Van Dyke, proctor for respondent, appearing before me at my office in Cleveland aforesaid, on the 20th day of January, 1865, at 11 o'clock a. m. of said day, and the witness Charles N. Deott appearing also before me at the time and place aforesaid, I have therefore proceeded with said examination as follows:

And the said Charles N. Deott, being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, wherein said Greening & Deott are libellants, and said schooner defendant, I did carefully examine the said Charles N. Deott, and he did thereupon testify as follows, to wit:

Question. Please state your occupation, and how long you have followed it.

Answer. My occupation is sailing, sir. I have sailed about twenty years; have sailed at sea five years, and have sailed on the lakes here fifteen years; been master of a vessel most five years—four years and a half; before that I was mate three years, off and on.

Ques. State when you took charge of the schooner Perseverance, and what was her last voyage.

Ans. I took charge of the schooner Perseverance, as master, the 26th day of October, 1864. I left here to go to Racine with a load of coal; got to Racine; unloaded my coal. I went up to Chicago and got a tug and towed my vessel up to Chicago; then I got a load of wheat from Mr. Waterson, of Chicago, and was bound for Ogdensburgh. I had a cargo of wheat of about thirteen thousand
65 bushels, at twenty-two cents per bushel; it was within two to four bushels of thirteen thousand bushels. I had five men before the mast, five able seamen, two mates, cook, and myself; that was one man more than she was used to carry; that was a full complement of men. I left Chicago on Saturday, the nineteenth, I believe, of November, with the wind S. S. W.; we kept on down on the west shore until we got down abreast of Bailey's harbor, wind from the west on, blowed heavy, and a heavy sea running from the westward; then we

kept away for the South Manitou at four o'clock on Monday morning, the sea being so heavy from the northward. After we kept away, the vessel was labouring so heavy with a head sea, she shipped a heavy sea forward, washed away the screen of our lights, so that it broke our lights; we could not show signal lights, left us nothing but a bright light to get where we could buy light. At eleven o'clock we got under the South Manitou. This accident to our signal lights occurred about ten minutes after four o'clock on Monday morning.

Question. From that time on, down to the time of the collision, what light did you use, and where located?

Answer. At night we used a bright light, and it was put on the poll post, where vessels always used to carry them before these new lights came out. On Monday morning, after we got under the South Manitou, it blowed very hard from the northwest, and snowed, and freezing hard. I stopped at the South Manitou to see if I could not get some lights. I went ashore; could get no signal lights there. I applied to the man that kept the dock there for lights, but there was no such thing as getting signal lights there. I spoke to a good many of the captains on shore; told them that I had lost my lights; they said the same as I did; they did not know where I could get lights. I went aboard the schooner Idaho and asked the captain if he had any lights; he was a friend of mine, and if he had any lights he should let me have them; he had nothing but a bright light to give me, and he gave me a bright light; and I supposed that it
66 might be of some use to me before I got down; as it happened, we did not use it; we had lights enough of our own. We lay at the South Manitoo until Wednesday morning, until about nine o'clock; the dock-keeper there is the only man there that keeps any stores. We left there to come down, the wind about south; then the wind backed down about southeast through the day, blowing heavy, about a nine-knot breeze. At seven o'clock in the evening passed point Waugoshanee; then the wind about south-southeast and blowing fresh, the vessel going about nine knots, we took in our light sails, put single reef in the mainsail, single reef in the foresail; we carried then single-reef mainsail, single-reef foresail, forestay sail, and jib; then kept along down till we got down pretty near Old Mackinac; the wind being pretty well to the eastward, could not fetch through the straits; we made a short tack to the southward; then heading down the straits again, heading our course, we went in stays about one o'clock, then steered east by south; the wind was about south by east. I went down below at one o'clock to warm myself, and told my second mate, who was keeping the decks, "if he saw any vessel's light to let me know." While I was below, I came upon deck to the companion door, and look three or four times, and asked my second mate if he saw anything, any vessel; he said no.

Question. State why you went below.

Answer. I went below to dry myself. I got wet coming around Point Waugoshanee. It was cold, freezing hard. I had pulled off my wet clothes after coming around the point, but I was chilly, it being so cold. In about a quarter to two o'clock, fifteen minutes to

two, my second mate opened the door; I was sitting down by the stove; he told me he saw a vessel's light ahead; I asked him whereabouts; he told me on the weather bow.—(The proctor for the respondent here objects to the conversation being given between the witness and his mate, the second mate.)—I told him that it was all right, and I would be up in a minute, so I followed him right
67 up and looked at the vessel's light; it bore about a point and a half on the weather bow; I asked my man at the wheel how she was heading.—(The proctor for respondent here objects to the statement of the wheelsman being given by witness, because it is secondary evidence.)—He told me she was heading east by south. I told him to keep her so. When I first saw the vessel's lights, the Grey Eagle's lights, I should judge she was two miles from us, may be more or less. When I first saw her light, I saw her green light; then in a little after I saw her green light, I saw both of her lights, her red and green light, for an instant, for about as long as a vessel would show when she was badly steered; then shut her red light altogether until she got about five points on our weather bow; then she kept right off, heading right for our midships; after I saw the vessel keep off, I jumped up on our rail into the main rigging and hailed them to keep their luff as loud as I could; also the man on the look-out and the second mate, and she kept coming on to us. Kept off nearly as fast as we was going through the water. When I saw she kept off for us, I told my man at the wheel to put his wheel hard up, the only thing I could do to save collision; then she ran right into us about twenty feet from our stern right into my room, into the cabin, and sunk us in about two minutes from the time she struck us. After she hit us, I started to run down into the cabin; the cabin was full of water, then level with the deck. I sang out to my men to get into the other vessel as soon as they could; all the men got on to the vessel except one man that was below and the man that was at the wheel; they got into the water. She went down so fast that they had not time to get hold of the vessel, by trying to save their clothes. We all got on to the Grey Eagle except those two men, and she sank in about two minutes, and we then got those two men aboard the Grey Eagle.

Question. When you went below, who did you leave on deck?

Answer. I left two men on deck and the second mate; that
68 was all that was required to work the vessel in fine weather.

Question. What were the duties of these men on deck, and where were they stationed?

Ans. One of them, whose duty it was to keep a look-out forward, and was forward, and one was steering as wheelsman, and the second mate's place was all around the deck, looking to see if he could see anything; that was what I used to do when I was second mate.

Ques. What course did you give to the man at the wheel when you went below?

Ans. I told him to keep the vessel east by south; also told my second mate the course; told him we wanted to keep her east by south until we got abreast of Sheboygan light.

Ques. What was then the course of the wind when you went below?

Ans. About south by east, and the wind was the same when I came up on deck.

Ques. When you came on deck how were the men stationed; how close were you sailing to the wind; what was its direction and force from that time until the time of the collision; what was your rate of speed; how fast was the Grey Eagle sailing under the canvass she carried; and what light were you showing when you went below, when you came on deck, and from then until the time of the collision; how was it burning; and what, if anything, was there to obstruct it from the view of an approaching vessel?

(The above question is objected to by respondents' proctor on the grounds of being double and argumentative.)

Ans. The man on the look-out, he was walking the deck forward; there was no man that could look out and keep still that night, he would freeze to death; one man was at the wheel, steering the vessel; and the second mate. I came right up behind him; I know it was a proper look-out kept, a good look-out, because when I came up on deck I could just see the Grey Eagles's light. The wind about a point free when I went below, and when I came up on deck, the di-
69 rection of the wind from that time when I came on deck, and up to the time of the collision, was south by east, as near as I could see, probably a little to the eastward, and we was going about six miles an hour, and the speed of the Grey Eagle under the canvas she had on was about six miles an hour, I should judge; she had her light sails in, too; when I went below we were showing a bright light; we had to show and continue to show that light up to the time of the collision. It was a good bright light, and burning well, and located on the paul bit; there was nothing to hinder an approaching vessel of seeing that light off for three miles; there was nothing in the way; the night was not a dark night; it was kind of cloudy, but was not dark.

(Respondents' proctor objects to evidence in regard to white lights denoting anything to an approaching vessel not prescribed by the regulations.)

Ques. How close to the wind could your vessel sail?

Ans. She could sail within about five points in good weather, light wind; with such a wind as this within six points or five and a half.

Ques. How was the sea?

Ans. There was no sea at all, smooth water.

Ques. What change of course, if any, was made on your vessel from the time you came on deck down to the time you gave the order hard up, and what order, if any, were given to change the course?

Ans. From the time I came upon deck to the time I gave the order of hard-up there was no change of course; there was no order given; only I told the man at the wheel to keep her on her course when I came up on deck.

Ques. When the Grey Eagle changed her course when you thought she was coming into you, what lights did she disclose; I refer to the time when you say that you hailed them to keep their luff?

Ans. Until she kept away into us I could see nothing but her green light; then after she kept away I could see both her lights till she got close into us, I should judge about twice the length of her, till
70 I saw she was going to hit us, then I ran forward in my vessel, and could see nothing but a green light; did not see anything but a green light afterwards until she hit us.

Ques. About how far off was she from your vessel when she kept away so as to threaten your vessel and make you think she was going to run into you?

Ans. I should judge about four times her length from us to the windward of us, about five points on our weather bow.

Ques. About how many points did your vessel go off under the hard-up order before she hit you?

Ans. About four points, left the vessel heading about northeast by east.

Ques. Suppose that when you gave the order "hard up" you had kept your course, what would have been the consequence?

Ans. She would have hit us somewhere about the forerigging on the starboard side.

Ques. Suppose you had ported, what would have been the consequence?

Ans. We would have run right into, probably head on.

Ques. What different course did your seamanship require you to take other than what you did take?

(Objected to by respondents' proctor because that is for the court to find from the evidence, and not for the witness to exculpate himself by conclusions from the evidence.)

Ans. No other course except you would want to run into the vessel. I could do no other thing to avoid a collision than what I have done.

Ques. State at what distance on that night those two vessels could see each other without any lights.

(Objected to by respondents' proctor as being immaterial, because seeing each other would not denote the course.

Ans. I could see the vessel's sails for a quarter to a half mile.

Ques. Did you see them that night?

71 Ans. Yes, sir; from a quarter to a half a mile, I did see them.

Ques. At what distance that night could the lay of the sails of either of the vessels be seen, so that by reference to the direction of the wind the vessel's course could be very nearly determined?

(Objected to by respondents' proctor, for the reason that the act of Congress has prescribed by what means the course of approaching vessels shall be determined between sun set and sun-rise.)

Ans. I should think the course of either vessel could be told a half a mile if proper look-out, was kept, without any lights, because the wind was from the southward and eastward, and a man that knew anything, if he see a vessel ahead he must know that she was either to go up the straits or down; if a vessel would be at anchor she would lay right across the straits.

Ques. (Last question repeated.)

(Same objection.)

Ans. I could see it a half a mile as the vessel was going; I could see the way the Grey Eagle was going that night without any of her lights for about a half a mile.

Ques. How far off could those on the Grey Eagle tell your course, supposing you carried no light?

(Objected to by respondents' proctor same as last above, and further that the Grey Eagle's crew were not bound to be on the look-out for vessels sailing without proper lights.)

Ans. I should think if they kept proper look-out, as a man ought to, they could have seen the vessel about a half mile the way we were going.

Ques. (Last question repeated.)

(Objected to as above.)

Ans. I should think that they could tell it a half a mile.

Ques. Before the Grey Eagle kept away, on what hand did she appear to be about to pass you, and on what hand would she have passed you if she had kept her luff instead of keeping away.

(Objected to by respondents' proctor, because the question
72 is leading, and does not seek to determine the course and position of the vessels, from which the court may find the fact.)

Ans. She would have passed on the starboard side from three to four times the length of herself.

Ques. How loud did you and the mate and look-out hail the vessel to keep her luff?

Ans. As loud as we could sing out.

Ques. What did you hear any of the officers and crew of the Grey Eagle say about the collision after you got on board, and which of them did you hear say anything about it.

(Objected to by respondent's proctor as to statements of the crew.)

Ans. After I got on the schooner Grey Eagle, I asked what fool was on deck; there was a man come up to me and told me that it was the mate. I asked him if he was the man; he said no, he was the second mate. I asked him if he was on deck; he said no, he was below, him and the captain. I asked him what kind of a fool he was, that man they had for mate; he told me he was one of the owners' brothers, a regular bull-head; he did not know enough to take a place before the mast, let alone to be mate of a vessel; he told me he had not done more than he expected, that he expected he would sink some vessel before he would get up to Milwaukee, for he was very near sinking a vessel in Saginaw bay the night before, through his carelessness, and had two or three collisions before that, and that is all I said to him. I heard some of the men say of the Gray Eagle, that they had not seen us before we holload, but I can't say who it was. The second mate appears to be the only man that knows anything aboard that vessel; this man I found was the second mate, the man that spoke to me on the Grey Eagle. I mean the man that first spoke to me.

(The foregoing statement of the witness are given subject to objections as being incompetent and inadmissable.)

Ques. What necessity was there of your making your voyage as quick as possible.

(Objected to as immaterial.)

Ans. It was because it was late in the season, and it had
73 been freezing hard for three or four days before that, and freezing hard at the time of the collision that day, and I know that if I had not improved the weather that we had and the fair wind we had, I should not have got through this fall. It was my duty to hurry down as quick as possible, if I wanted to get through.

Ques. What would have been the average length of trip from the place of collision down to Ogdensburgh?

Ans. It depends altogether on the wind and the weather; from where we were sunk, we would average from ten to twelve days to Ogdensburgh, if we had fine weather, but if the weather had kept on freezing we should not have got through.

Ques. After you had lost your lights down to the time of collision, how many vessels had you passed in the night-time, and what, if any, difficulty had either you or they experienced in getting by each other safely?

(Objected to by respondents' proctor as immaterial.)

Ans. We passed about four or five vessels and several propellers; we had no difficulty; we past two vessels the night of the collision, one about a quarter of a mile off, going up.

Ques. Whereabouts did this collision occur with reference to the channel, and how wide is the channel there?

Ans. It is about two miles above Sheboygan light; we bore about northwest of Sheboygan light; the channel is about four miles across for navigation; we were pretty near the middle of the channel and a little to the north side.

Ques. Is it customary for vessels to anchor at night in the channel?

(Objected to by respondents' proctor as immaterial.)

Ans. No, sir; not in the channel, because there is good anchorage on each side the channel where vessels can come to, when they want to come to.

Ques. With the wind as it was, how would a vessel laying at anchor in the straits range?

Ans. She would lay right across the straits, her stern up the straits, if anything.

74 Ques. When the Grey Eagle bore away, how did her lights show themselves, so far as you observed them?

Ans. As soon as she kept away, I could see both of her lights after she got pretty close on to us. I shut her green light a little while, that was the time I got up into the rigging, then opened her green light again. I did not notice her lights any more. I could see the vessel then, her sails and everything, till she got into us. I could see her green light still.

Ques. What light was shut out after you went forward past the bows of the Grey Eagle?

Ans. The red light.

Ques. State if you know the value of the vessel, freight, and the property that you lost on the vessel.

(Objected to by respondents' proctor as to the value of the vessel, and other property, for the reason that the witness has not been shown to be a competent judge.)

Ans. There was eighty-five hundred dollars paid for the vessel, cash down, on the 26th day of October, and I put about five hundred dollars repairs on the vessel. I should say that she was worth about nine thousand dollars when she was sunk, we had a twenty-eight hundred and fifty odd dollars freight, which was lost; my clothes that I lost on the vessel were worth three hundred dollars. I lost seventy dollars in money with my clothes.

Ques. State the age of the vessel and her condition.

Ans. The vessel was about nine years old next spring. If I do not mistake, she has had new decks put on her two years ago; the vessel was in good condition; she had good sails; she was in good condition generally.

Cross-examination by J. H. Van Dyke, esq., proctor for respondent:

Ques. Are you the same Charles N. Deott named as one of the libellants in this suit?

Ans. Yes, sir; I am the man.

Ques. What wages did you have, and what wages did the different persons composing the crew have?

75 Ans. I had one hundred and twenty-five dollars per month; the first mate was getting four dollars and a half a day; second mate getting four dollars a day, and five dollars a month over and above that; and the seamen was getting four dollars a day each; the cook was getting fourteen shillings a day.

Ques. What was the daily expenses of the vessel besides wages?

Ans. We can't board a man for less than fifty cents a day; the daily expenses were not less than twelve dollars a day besides wages.

Ques. What were the canal tolls?

Ans. I do not know what the canal tolls were.

Ques. When you say that you had a twenty-eight hundred dollar freight, do you mean net or gross?

Ans. I mean gross.

Ques. Why then did you swear in the libel that the value of the freight lost was twenty-eight hundred dollars, if this was the gross freight?

Ans. I should call that the value of the freight lost.

Ques. What would you call the value of the freight lost?

Ans. That was the freight we had on the cargo, twenty-two cents a bushel.

Ques. Will you answer my question or not, how you happened to

swear in the libel filed that was the value of the freight, if it was the gross value?

Ans. I should call the freight the value of the freight; that is the way I come to say so.

Ques. Is that the only answer you have to make?

Ans. That is all I can understand of him.

Ques. You have sworn in your examination to-day, you saw the Grey Eagle's lights about two miles off; in the libel you swear "she was then about a half a mile distant;" how happens it that you swear so different now from your sworn statements in the libel?

Ans. There must be a mistake there somewhere; she was about two miles off when I see her; it might be less.

Ques. Is that the only answer you can make to the question?

Ans. Yes, sir.

76 Ques. Did you not swear to the statements in the libel as follows, speaking of the second mate having the watch on deck, "being on the look-out, discovered lights ahead, and soon discovered they were borne by a schooner approaching the schooner Perseverance in a west-northwest direction, apparently about a half mile distant, and then bearing about one point on our starboard bow."

Ans. No, sir; I don't remember about that statement about a half mile.

Ques. Who drew the libel?

Ans. Mr. Lynde.

Ques. Who gave him the statement of facts from which he drew the libel?

Ans. I did.

Ques. Did you swear to the libel drawn by him?

Ans. Yes, sir; I swore to the libel.

Ques. Was it read to you before you signed it and swore to it?

Ans. It was read to me pretty fast; as far as I could remember, it was pretty right, but I don't remember anything about that half mile.

Ques. How long was it after the collision before you gave the facts from which he drew the libel?

Ans. It was about nine or ten days.

Ques. Did you or did you not then state to Mr. Lynde the facts stated in the preceeding question, and make solemn oath to the truth before the clerk of the United States court for Wisconsin?

Ans. Yes, sir.

Ques. Why do you now vary so important a point from the statement in the libel?

Ans. Mr. Lynde must have misunderstood me, or I must misunderstood him when he read the libel.

Ques. Have you not been present at the examination of your case thus far taken?

Ans. Yes, sir.

Ques. Were you not present at Milwaukee before the commissioner when they were taken?

Ans. Yes, sir.

Ques. Why did you cause that examination to be adjourned and have notice given to take your deposition de bene esse here?

77

(Objected to by pl'ffs' proctors as irrelevant.)

Ans. It was because I had not got all my witnesses there, and I was not going to give my evidence until I had got them all in.

Ques. Have you examined any other witnesses since that examination was adjourned?

Ans. No, sir.

Ques. You state that you had one extra man aboard the Perseverance; were they all men?

Ans. Yes, all but a woman cook.

Ques. Is this the person that the second mate testified that took care of your wardrobe at the time he saw your clothes?

Ans. There was nobody taking care of my wardrobe. I was taking care of it myself. I don't believe the second mate ever said that she took care of my wardrobe. I never heard it.

Ques. Who was with you in the cabin when you were below, shortly before the collision, when you were warming yourself?

Ans. The mate was in bed in the cabin, asleep, I suppose; so was the cook in bed and asleep, I suppose, in the cabin. I was sitting by the stove warming myself; that was when I was in the cabin.

Ques. You state that you got wet about seven o'clock in the evening and changed your clothes; did not the first mate's watch intervene before your watch, during which the collision took place?

Ans. The mate staid on deck from eight till twelve; at twelve o'clock he went below and never came upon deck again until we collided; had no use for him.

Ques. Did you not have time to warm yourself during the mate's watch, or what prevented you?

Ans. Yes, sir, I did. I was chilly all night, from getting wet.

Ques. When the second mate went down to your cabin-door to call you, who was left on deck?

Ans. The man on the look-out and the man at the wheel.

Ques. Did you consider yourself quite as safe sailing along as you were as you would have been with proper lights?

Ans. Yes, I did; that is, such a night as that was, a pretty clear night; if it had been a very dark night, I would not have thought myself quite so safe.

78

Ques. Did you not know that you were proceeding in violation of he act o Congress regulating lights?

Ans. No, I did not know as I was; if I had left some place where I could have got a light, I should have thought I had done very wrong without them, as I lost them on the lake; it was my duty to get down the lake where I could get some, because vessels are liable to lose light sometimes.

Ques. Did not you and your first mate talk about the danger of proceeding without proper lights?

Ans. No; we never did talk about the danger, but said it was very

bad we did lost our light; supposed we could not get them until we got to Detroit.

Ques. Did not the first mate say that he had made up his mind upon meeting another vessel to hide the bright light and keep out of the way?

(Objected to by pl'ffs' proctor as irrelevant.)

Ans. Not to me; he never mentioned it; another thing, I would not allow a mate to tell me what to do on my vessel.

Ques. Have you stated all the conversation between you and your officers about the impropriety of proceeding in the night without lights?

(Objected to by pl'ffs' proctor as incompetent.)

Ans. I believe I have; I don't remember anything else I said, only that it was too bad we lost our lights.

Ques. How near were you to Old Mackinac when you come into stays?

Ans. I could not tell you for certain; I did not notice Old Mackinac; we might have been within three or four miles; can't say for certain; perhaps more, perhaps less.

Ques. Do you know what course your wheelsman swore the wind was that night; what was it?

Ans. Yes; south by east, or to the eastward; that means to the eastward of south by east.

(The last question objected to by pl'ffs' proctor as incompetent.)

79 Ques. Did he, that is the wheelsman, or you, have the better opportunity of knowing the course of the wind at the time?

Ans. Yes, sir; the wheelsman had the compass to look at, and had the better opportunity; I could look at the fly when the vessel was kept on her course; I could tell within the half of a point how the wind was.

Ques. How could you tell the vessel was on her course having just come up out of the cabin?

Ans. I asked my wheelsman how the vessel headed, he repeated east by south, I told him to keep her so; that was the course that was given.

Ques. Did you or did you not truthfully state the course of the wind in your libel as you then understood it?

Ans. I did, as near as I could get at it.

Ques. If you then stated under oath that the wind was south, what has changed its course, in your mind, since?

Ans. I believe I have stated in the libel that the wind was south and to the eastward; I have studied since a good deal about the wind, and how we was going, and I think the wind must have been about south by east, I should think; but a point or half point is very little in the wind.

Ques. Have you not heard the testimony of your second mate and wheelsman on that point since you swore to your libel?

Ans. Yes, sir.

Ques. If the Grey Eagle was going about six miles an hour, and your vessel at the same speed and distance from each other, and run-

ning on the courses you have stated, how long would it be before they would meet at a common centre?

Ans. Not long, probably eight or ten minutes.

Ques. If a half mile apart, and running at the same speed, how long would it be before they would meet at the common centre, running on their courses?

Ans. Not long. about three or four minutes.

Ques. Now, captain, do you pretend to say that that night you could not make the Grey Eagle's lights more than two miles?

Ans. I should say we might make her lights about two miles;
80 it might be more and it might be less.

Ques. Don't you know that your second mate made them about five miles off?

Ans. I believe that the second mate made a mistake in his distance; no doubt that is what he said.

Ques. If the second mate saw the lights ten minutes before he called you, and the lights could only be seen two miles, how close must the vessels have been when you got on deck, with the speed and course they were running?

Ans. Well, sir, there is a mistake there somewheres, because that is what he said; if he had not called me until ten minutes after he made the lights, the vessels would have been togther.

(The above question was objected to by plaintiffs' proctor, as calling for a calculation on hypothesis and facts, and not testimony as to facts or opinions of an expert.)

Ques. You are asked if you had ported your helm when the Grey Eagle was about four lengths off from you, you would have run into her head on; if you had ported your helm before you had got as close, where would you have run to?

Ans. We would have come up into the wind, and laid there still

Ques. If you had been on deck, captain, and saw the Grey Eagle's lights, both of them five miles off, and again saw both lights about a mile off, how near dead ahead would you say you were?

Ans. I could not see the Grey Eagle's lights five miles off that night.

Ques. If you had been on deck and saw the Grey Eagle's red and green lights as far off as you could see lights that night, and should again see both lights when she had lessened the distance one-half, how far from dead ahead would the vessels be from approaching each other dead ahead?

Ans. I can't answer that question, as I did not see both her lights when she was half the distance.

Ques. Will you answer the question, or do you refuse to answer the question by your evasion?

Ans. If the Grey Eagle had shown both of her lights half the distance from where I first saw her, I could have told pretty
81 near how she would have passsed us; but she did not show them, only her green light at the time.

Ques. Is that the only answer you make to the question?

Ans. That is all I can tell you; had she shown both her lights, I could tell you more about it.

Ques. What risk would you have incurred in coming to anchor in a proper place in the straits that night, showing a bright light?

Ans. No risk, as I know of, as we have to show a bright light when we come to anchor, if I had come to an anchor in a proper place.

Ques. You state that you passed a number of vessels and propellers that night; what were they and where did you pass them?

Ans. I could not tell what they were, because it was dark; I past two propellers off Point Waugoshanee, one above and one below; I passed one vessel off below Point Waugoshanee; past another one about half-way between Old Mackinac and Sheboygan light; and the mate said that he passed one in his watch, a vessel and a propeller.

Ques. Did you pass any vessel in the narrow part of the straits, near where the collision took place?

Ans. One about half-way between Old Mackinac and Sheboygan light.

Ques. You state that you were to the leeward of the Grey Eagle, and just before she struck you, you put your helm up, and headed around about northeast by east; now if you had been to the windward of the Grey Eagle, and put your helm up, how would have your vessel headed?

Ans. If I had been to the windward of her, and ahead of her, I would have headed right across her bows, if I had been far enough off ahead of her, and would have been heading northeast by east.

Ques. Where was the Perseverance built?

Ans. In Buffalo, I think; her foresail was got this spring, and her mainsail was a year old; her jibs were a year old; her light sails would have lasted about a year longer; if she was chuck full, she would carry thirteen thousand four or five hundred bushels of good wheat.

Ques. Did you ever own a vessel?

Ans. No, sir.

82 Ques. Did you ever deal in them in any way?

Ans. No, sir; I never bought or sold any.

Ques. What is the name of your first mate?

Ans. His name is W. Packer; he lives somewhere in York State; I shipped him in Chicago; I let him go, supposing that I should not want him in this case, I took his address, but have lost it.

The further taking of depositions is adjourned until Jan'y 21st, 1865, 9 a. m.

JAN'Y 21*st*, 1865—9 a. m.

Resumed.

Ques. What is the name of the second mate of the Grey Eagle, with whom you had the conversation detailed by you, and where is he now?

Ans. The name I do not know; I never asked the man's name; and

I do not know now where he is; I heard from one of the men in Milwaukee, that he had been drafted, and run away, because I enquired for him as soon as I got up there, for I wanted him, and one of the men told me he had run away.

Ques. Was the Perseverance insured; and if yea, in what company?

Ans. She was not insured.

Ques. Do you know how she was rated or classed?

Ans. No, sir.

Direct resumed by Geo. Willey, proctor for libellant:

Ques. You may state whether you were ever advised, or supposed that it was necessary, to have everything stated in the libel with just as much precision and particularity as might be required when the case came to be tried?

Ans. No, sir; I thought that about all that was necessary to give in the libel, was what the vessel was worth and what our damage was.

Ques. State whether you ever had any different opinion or recollection as to any of the matters testified to by you, than as you have now stated?

(Objected to by respondents' proctor as contradicting the witness' previously sworn statements.)

Ans. No; I did not have no different opinions; I did not
83 think that it was so necessary to give the true statements, I mean, as correct statements as now in the stand, because I was in a great hurry, and wanted to make the time as short as I could.

Ques. Have you stated in regard to all matters testified to by you as you believe them to have been?

(Objected to by respondents' proctor for the same reason as last above stated, and further, because the question in itself is improper, and does not call for evidence, but to reconcile the witness' contradictory statements under oath by him made in his libel and evidence.)

Ans. Yes, sir; as I near as I could get at it at this time.

Ques. What difficulty is there in knowing the course of the wind very nearly, when you have the course of the vessel and see how your sails lay?

(Objected to by respondents' proctor as immaterial.)

Ans. There is no difficulty to see from a half a point to three quarters of a point from where the wind blows, becausc we have a fly to tell from where the wind blows—the only thing by which we can tell how the wind blows.

Ques. How were your sheets from the time you came on deck, down to the time you gave the order "hard up;" and state whether or not they were started during this time?

Ans. The sheets were by the wind, about five points by the wind, about five points and a half from the wind; then we were heading about six points from the wind left, on the wind about a point free; the sheet was not started from the time I came on deck until the vessel went down; I mean the sheets were not started.

Ques. Off which bow of your vessel did the Grey Eagle bear, from the time you first made her lights down to the instant of collision?

(Objected to by respondents' proctor for the reason that it is merely duplicating the evidence already taken on that point.)

Ans. On our starboard bow.

Ques. State about the mate's coming to call you, and how it was done?

(Same objection as last above.)

84 Ans. He came down and opened the hall door; told me it was a vessel ahead; I asked him where; he said on the weather bow; and I told him that it was all right; the mate turned right around, went up on deck, and I followed him right up.

(Objection in due time by respondents' proctor, to conversation being given by witness with his mate.)

Ques. State how many steps he had to go down, and whether he had to go in the cabin?

(Objected to as immaterial, because neither the mate nor the captain had any right to be off duty during their watch.)

Ans. Three or four steps, and opened the hall door and spoke to me; he did not go into the main body of the cabin, just into the hall.

Ques. How quick did he go back?

(Same objection as that above.)

Ans. In an instant; I went right up immediately; I was already dressed, had been.

Ques. State in regard to the wind, as to its steadiness or otherwise, that night and morning of the collision?

(Objected to by respondents' proctor as renewing the examination in chief on the same point.)

Ans. The wind had been very steady that night.

Ques. How was the wind in that respect, down to the time of the collision, steady or otherwise?

(Objected to by respondents' proctor as a mere repetition of examination in chief and last preceding question.)

Ans. The wind was steady at the time of the collision and before it.

Ques. If the Grey Eagle had luffed when you hailed her, to where would she have passed?

(Objected to by respondents' proctor as immaterial at that moment.)

Ans. She would have passed us three times the length of her, to the windward, on our starboard side, if she had luffed at the time I hailed her.

Ques. How did Sheboygan light bear, from the time you first came on deck down to the time of the collision?

(Objected to by respondents' proctor as immaterial, as the Perseverance did not show his position in course by proper lights.)

85 Ans. Sheboygan light beared about south-southeast from us; I could see Sheboygan light about a half a point to leeward of the Grey Eagle.

(The latter part of this answer objected to as volunteer, and not responsive to the question.)

Ques. State how long the light bore to the leeward of the Grey Eagle.

Ans. About ten minutes, from the time I came up on deck until she run us down; I could see the light to the leeward of her all the time.

Cross-examination resumed by J. H. Van Dyke, esq., proctor for respondent:

Ques. How long were you in Milwaukee having your libel prepared, and how many days after it was drawn up, before it was signed and sworn to?

Ans. I was five days in Milwaukee, but did not work at the libel all the time I was there; had about eight hours, four hours one day and four hours the next day, until they got the libel ready and signed.

Ques. You answer that you did not think that it was necessary to give the true and correct statements in the libel as in your deposition; were you not sworn to the truth of the libel, and what do you mean by your attempted explanation of your different statements made under oath in your libel and deposition in regard to the matters before enquired of, that is, the course of the wind and the distance of the approaching vessels?

Ans. No; I did not know that it was necessary to mention all those little things; they did not ask me no questions exact to that effect and did not swear to the libel until after it was drawn out.

Ques. Is that all your answer, captain?

Ans. Yes.

Ques. Was there any other person present, on behalf of the vessel, to give the course of the wind and the distance of the vessels than yourself, when the libel was drawn; if yea, whom?

Ans. No, sir; there was nobody there but myself, to give the distance of the vessel or course of the wind.

C. N. DEOTT.

86 UNITED STATES OF AMERICA, *Northern district of Ohio, ss:*

I, Robert E. Mix, a notary public, duly appointed in and for the county of Cuyahoga and State of Ohio, and commissioned under and by virtue of an act of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20, 1812; and the act of Congress, entitled "An act in addition to an act, entitled 'An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States,'" passed March 1st, 1817; and the act, entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789; and the act, entitled "An act to authorize notary publics to take and certify oaths, affidavits, and acknowledgements in certain cases," passed September 16th, 1850; and an act, entitled "An act supplementary to an act, entitled 'An act authorizing notaries public to take and certify oaths, affidavits, and acknowledgements in certain cases,'" passed July 29, 1854, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of Charles N. Deott is material and necessary in the cause the title whereof is in the caption of said deposition named, being the case wherein John Greening and Charles

N. Deott are libellants, and the schooner Grey Eagle defendant, now pending in the court of the United States for the district of Wisconsin, and that the said witness lived at a greater distance than one hundred miles from Milwaukee, in the State of Wisconsin, the place of trial of said cause, and that Emmons & Van Dyke, the proctors for respondent, reside at Milwaukee aforesaid.

I further certify that a written notification of the time and place of taking the said deposition, signed by me, was made out and served on Emmons & Van Dyke, proctors for respondent, to be present at the taking of the said deposition, and to put interrogatories if he or they might think fit, a copy of said notice and proof of service being hereto attached.

87 I further certify that on Friday, the twentieth day of January, in the year of our Lord one thousand eight hundred and sixty-five, I was attended by George Willey, esq., proctor for libellants, and J. H. Van Dyke, esq., proctor for respondent, and by the witness Charles N. Deott, aforesaid, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and his deposition was by me reduced to writing in the presence of said witness, and from his statements, and, after carefully reading the same to the witness, he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same was taken, and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up, and directed as aforesaid, in the post office in Cleveland, the place where said deposition was taken.

And I do further certify that I am not of counsel, nor attorney, solicitor, proctor, nor advocate for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof I have hereunto set my hand and seal, this twenty-third day of January, in the year of our Lord one thousand eight hundred and sixty-five.

[SEAL.] ROBERT E. MIX,
Notary Public for Cuyahoga County, Ohio.

[Stamp.]

And at the hearing of said cause the following depositions were read and admitted as testimony on the part of the respondents:

Respondents' testimony.

88 United States district court, district of Wisconsin.

JOHN GREENING AND OTHERS
vs.
THE SCHOONER GREY EAGLE.

It is hereby stipulated and agreed that the depositions of certain witnesses, whose names are not now known so as to be inserted here-

in, but who are in Chicago, in the State of Illinois, may be taken before Phillip A. Hoyne, esq., at his office in the city of Chicago, and State of Illinois, on the interrogatories and cross-interrogatories hereunto annexed; that in case of the absence of said commissioner herein named, or of his inability or refusal to take the depositions, that the same may be taken before the clerk of the circuit court of the United States for the northern district of Illinois, or before any commissioner of said court resident in Chicago aforesaid; that the issuing of the commission is hereby waived; that the said deposition, when taken, shall be returned to the clerk of the district court of the United States for the district of Wisconsin, at Milwaukee. All objections to said depositions are hereby waived, except for irrelevancy or incompetency.

FINCHES, LYNDE & MILLER,
Proctors for Libellants.
EMMONS & VAN DYKE,
Proctors for Respondents.

United States district court for the district of Wisconsin.

JOHN GREENING AND OTHERS
vs.
THE SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture.

89 Interrogatories to be propounded to witnesses to be produced, sworn, and examined on the part of the respondents, in pursuance of the annexed stipulation.

1st interrogatory. What is your name, age, and occupation, and where do you reside?

2nd int. How long and in what capacity have you sailed, and upon what waters?

3rd int. Where was you on the night of the 23rd of November and the morning of the 24th of November, 1864?

4th int. From what direction was the wind on that night, and from what direction was the wind between two and three o'clock of the morning of the 24th of Nov'r, 1864?

5th int. State whether there is any usage on the lakes for vessels, on leaving port, to provide themselves with torchlights; if yea, what is the usage prevailing, how generally is it complied with, and what use is made of the torchlights by vessels in the course of their voyage?

6th int. How should signal lights carried by sailing vessels be secured, and where placed, so as not to be broken or carried away by the sea? State if they can be so placed and secured, and how.

7th int. What are the duties and office of a second mate on board a sailing vessel on the lakes; to whose watch does he belong; and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess; and if not, why not?

Last int. Do you know of any matter or thing of benefit or advantage to the parties in this suit? If yea, set forth the same fully.

EMMONS & VAN DYKE,
Proctors for Respondents.

90 United States district court for the district of Wisconsin.

JOHN GREENING AND OTHERS
vs.
THE SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture.

Cross-interrogatories to be propounded to witnesses to be examined in Chicago, before ——— ———, commissioner, in accordance with the stipulations hereto attached.

First cross-int. If, in answer to the third interrogatory, you state where you were, state the exact locality in which you were between two and three o'clock on the morning of the 24th of November, 1864, and what were you doing at the time. If you were on board a vessel, state upon what vessel, whether you were on deck or below, in what capacity you were on board. What course was the vessel steering, under what canvass was she sailing, and at what speed?

Second cross-int. If, in answer to the 4th int., you state the direction of the wind between 2 and 3 o'clock a. m. of November 24th, 1864, or at any other time; state truthfully and fully, at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

FINCHES, LYNDE & MILLER,
Proctors for Libellants.

UNITED STATES, *Northern District of Illinois, ss:*

Be it remembered, that on the twelfth day of April, A. D. 1865, personally appeared John W. Jones, Roger Morgan, Hugh W. Jones, William McFadden, Gabriel Gunderson and James M. Kennedy, before me, Phillip A. Hoyne, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the eighth circuit, under the laws of the United States, to take affidavits and acknowledgements of bail, etc., to testify and in truth to say on the part and behalf of the respondents, in a certain
91 suit or matter of controversy now depending and undetermined in the United States district court for the district of Wisconsin, at Milwaukee, in said State, wherein John Greening and others are the libellants, and the schooner Grey Eagle, her boats, tackle, apparel, and furniture, is the respondent.

And the said witness, John W. Jones, being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

1st int. What is your name, age, and occupation, and where do you reside?

Ans. My names is John W. Jones; I am 47 years of age; my occupation is sailing; I am a master mariner; I reside in Racine, Wisconsin.

2nd int. How long and in what capacity have you sailed, and upon what waters?

Ans. I have sailed about thirty-two years; been on the lakes here since 1843; I have been master of a vessel during sixteen or seventeen years of that time; I have sailed on salt water before and since I came to sail on the lakes.

3rd int. Where was you on the night of the twenty-third of November and the morning of the twenty-fourth of November, 1864?

Ans. On the night of the twenty-third of November, 1864, I was sailing on Hammond bay, on Lake Huron, from Presque Isle, crossing Hammond bay; I was all of twenty miles from Sheboygan light at that time, about the middle of the bay; this was after twelve o'clock of that night.

4th int. From what direction was the wind on that night, and from what direction was the wind between two and three o'clock of the morning of the 24th of November, 1864?

Ans. To the best of my knowledge and recollection the wind was from south by west to south-southwest; this was from twelve
92 to four o'clock; I was on watch from twelve to four o'clock on the morning of the 24th of November, 1864; the wind did not vary much during my watch, say one or two points; before breakfast time on that morning the mate of the schooner Eclipse, of which I was captain, came and woke me up, saying there was a vessel to anchor, with flag at half-mast, asking me if he should go to her to see what she wanted; that we could not fetch her without going about; at same time I got up; it proved to be the Grey Eagle, and I asked them, when I go up to her, what they wanted; the captain of the Grey Eagle told me he had his flag up, for the propeller was coming down, and he wanted me to hail her and tell the propeller to come alongside and take his men off, and I done so; I then proceeded on my voyage; the night was kind of hazy, snowing a little at times, the stars showing at times; sometimes I could see the stars when the shower was over.

5th int. State whether there is any usage on the lakes for vessels, on leaving port, to provide themselves with torchlights; if yea, what is the usage prevailing, how generally is it complied with, and what use is made of the torchlights by vessels in the course of their voyage?

Ans. Yes, there is a general usage for vessels on the lakes, on leaving port, to provide themselves with torchlights, to use when we see a vessel in a dark night, to show them where we are, to avoid a collision; torchlights are generally used by all vessels; it is a general usage for vessels to carry torchlights; it has been so with all vessels I have been in; I don't know of any vessel but what use them.

6th int. How should signal lights, carried by sailing vessels, be secured, and where placed so as not to be broken or carried away by the sea? State if they can be so placed and secured, and how.

Ans. I can't answer that question, as the law has been changed.

93 7th int. What are the duties and office of a second mate on board a sailing vessel on the lakes; to whose watch does he belong; and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess; and if not, why not?

Ans. The duties and office of a second mate are to assist the captain in navigating the vessel, to keep his watch sometimes; the same qualifications are sought for and required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess.

Last int. Do you know any other matter or thing of benefit or advantage to the parties in this suit? If yea, set forth the same fully.

Ans. I have heard of the collision between the schooner Grey Eagle and the schooner Perseverance, which occurred on the night of the 23rd of November, 1864. I am of the opinion that the captain of a vessel passing through the straits at night should remain on deck when he had not proper lights aboard, or come to an anchor. The way we had the wind that night, if I had been in the Perseverance' place, I should have pushed through and remained on deck myself.

J. W. JONES.

Cross-examination:

1st cross-int. If, in answer to the third interrogatory, you state where you were, state exact locality in which you were between two and three o'clock on the morning of the 24th of November, 1864, and what you were doing at that time. If you were on board a vessel, state what vessel, whether you were on deck or below, in what capacity you were on board, what course was the vessel
94 steering, under what canvass was she sailing, and at what speed.

Ans. As near as I can state I was in Hamond's bay, about the middle of the bay, between 2 and 3 o'clock of the morning of the 24th of November, 1864, as I have stated in answer to third direct interrogatory. We were sailing along at the time, coming westward towards the straits. I was on board of a vessel, the schooner Eclipse. I was on deck through that watch from twelve to four o'clock. I was captain. We were steering west by north at that time; the wind was free, a little free, and we kept pretty well up in the bay; the lower canvass not on; jib topsail and two gaff topsails were furled; going between six and seven miles an hour. If the wind had been free, I would not have hauled up so far in the bay.

2nd cross-int. If, in answer to the 4th interrogatory, you state the direction of the wind between 2 and 3 o'clock a. m. of Nov. 24th, 1864, or at any other time, state truthfully and fully at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

Ans. It was at two o'clock of that morning. I recollect the wind was south-southwest, because we had to haul off the main sheet. It

was a little too far out. I assisted at that hour in hauling aft the main sheet, and in trimming the sails.

J. W. JONES.

Subscribed and sworn to before me this 12th day of April, A. D. 1865.

PHILLIP A. HOYNE.

ROGER MORGAN, a witness produced on behalf defendant, called and sworn.

1st int. What is your name, age, and occupation, and where do you reside?

95 Ans. My name is Roger Morgan; I am about 33 years of age; I am a sailor by occupation, master mariner; reside in Milwaukee.

2nd int. How long and in what capacity have you sailed, and upon what waters?

Ans. I have sailed before the mast, second mate, mate, and master. I have sailed eighteen years. I have sailed fourteen years on the lakes, and four years at sea before I came on the lakes.

3rd int. Where was you on the night of the 23d of November, and the morning of the 24th of November, 1864?

Ans. That I can't tell. I was in Milwaukee.

4th int. From what direction was the wind on that night, and from what direction had the wind been between two and three o'clock of the morning of the 24th November, 1864?

Ans. I can't tell, as I was not on board of my vessel.

5th int. State whether there is any usage on the lakes for vessels on leaving port to provide themselves with torchlights. If yea, what is the usage prevailing, how generally is it complied with, and what use is made of the torchlight by vessels in the course of their voyage?

Ans. It is always necessary for vessels to carry torchlights. Torchlights are always carried to show when wanted to use. When a vessel is close to you, to show him the position my vessel is in.

6th int. How should signal lights carried by sailing vessels be secured, and where placed, so as not to be broken or carried away by the sea? State if they can be so placed and secured, and how.

Ans. The safest place would be to secure them on the rail or in the rigging, either one of these places. They can be so placed and secured.

7th int. What are the duties and offices of a second mate on board a sailing vessel on the lakes; to whose watch does he belong;

96 and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain and first mate are required to possess; and if not, why not?

Ans. The duties and office of a second mate are to look after the vessel and attend to her interests. He belongs to the captain's watch; he is not required to have the same qualifications that the captain or first mate are required to have, because he is not sup-

posed to have as much charge on him. His responsibilities are not so great.

Last int. Do you know of any other matter or thing of benefit or advantage to the parties in this suit? If yea, set forth the same fully.

Ans. From what I heard of the collision, my opinion is, that the captain of the Perseverance should have come to an anchor and waited till daylight, or kept clear of all other vessels, on account of not having his lights. I know the mate of the schooner Grey Eagle, John Johnson. I have sailed with him; he is a good officer to have charge of a vessel, a careful, good man to have charge of a vessel. He had been second mate and mate with me.

Cross-examination:

1st cross-int. If, in answer to the third interrogatory, you state where you were, state the exact locality in which you were between two and three o'clock on the morning of the 24th of November, 1864, and what were you doing at that time. If you were on board a vessel, state upon what vessel, whether you were on deck or below, in what capacity you were on board, what course was the vessel steering, under what canvass was she sailing, and at what speed.

97 Ans. As I have stated, I was not on board of any vessel. I was at home in Milwaukee.

2nd cross-int. If, in answer to the 4th interrogatory, you state the direction of the wind between two and three o'clock a. m. of Novem ber 24th, 1864, or at any other time, state truthfully and fully at what particular time; how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

Ans. I have nothing to say in answer to this interrogatory.

ROGER MORGAN.

Subscribed and sworn to before me this 12th day of April, A. D. 1865.

PHILLIP A. HOYNE.

HUGH W. JONES, a witness produced on behalf of the defendant, called and sworn.

Interrogatory 1st. What is your name, age, and occupation, and where do you reside?

Ans. My name is Hugh W. Jones; about 41 years of age; my occupation, sailing; I reside at Racine, Wisconsin.

Int. 2d. How long and in what capacity have you sailed, and upon what waters?

Ans. I have sailed for this last thirteen years, before the mast, mate, and master, upon the lakes.

3rd int. Where was you on the night of the 23d of November, and the morning of the 24th of November, 1864?

Ans. I was on Lake Huron, aboard of the Ethan Allen, schooner,

as master, all through the night of the 24th of November, 1864, till in the neighborhood of four o'clock in the morning, when we reached Sheboygan light.

4th int. From what direction was the wind on that night, and from what direction was the wind between 2 and 3 o'clock of the morning of the 24th of November, 1864?

Ans. To the best of my recollection, the wind on that night was south by west, south-southwest. It was about the same be-
98 tween 2 and 3 o'clock of the morning of the 24th of November, 1864. It was my watch from twelve to four of that night. I was on deck during my watch; the wind did not vary much during my watch; the night was kind of thick, cloudy, dark, a little misty. When the watch was called we passed Sheboygan light, at four o'clock, and passed McAlpine point about seven o'clock in the morning. The wind was then about south-southwest, a little westwardly, probably. From 40-Mile point to ten miles below Sheboygan light we were close-hauled on the wind. The wind was about south-southwest then. This was about between 2 and 3 o'clock.

3rd int. State whether there is any usage on the lakes for vessels, on leaving port, to provide themselves with torchlights. If yea, what is the usage prevailing; how generally is it complied with, and what use is made of the torchlights by vessels in the course of their voyage?

Ans. Yes, vessels provide themselves with torchlights on leaving port. They generally use it to show in what position another vessel is standing. It is a general usage by all vessels.

6 int. How should signal lights carried by sailing vessels be secured, and where placed so as not to be broken or carried away by the sea? State if they can be so placed, and how.

Ans. That is a question pretty hard to answer. They carry them in all places, pretty much. These big vessels can carry them forward right on the rails. I have seen them carried on the main rigging. I don't know that they can be secured so as not to be carried away.

7th int. What are the duties and office of a second mate on board a sailing vessel on the lakes; to whose watch does he belong; and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess; and if not, why not?

Ans. He is there in the captain's watch, to take care of the watch if the captain happens to go below. He belongs to the captain's watch. I think a second mate is not required to possess the same qualifications as the captain or first mate of a sailing vessel.
99 There is not the same responsibility on the second mate there is on the other two.

Last ints. Do you know of any other matter or thing of benefit or advantage to the parties in this suit? If yea, set forth the same fully.

Ans. The way we had the wind at that time, it was as fair, in my

opinion, for vessels coming down as for those coming up through the straits.

Cross-examination:

1st cross-int. If, in answer to the third interrogatory, you state where you were, state the exact locality in which you were between 2 and 3 o'clock on the morning of the 24th November, 1864, and what were you doing at the time. If you were on board a vessel, state upon what vessel; whether you were on deck or below; in what capacity you were on board; what course was the vessel steering; under what canvass was she sailing; and at what speed.

Ans. Between 2 and 3 o'clock on the morning of the 24th of November, 1864, I was near Forty-Mile point, on Lake Huron. We were coming up from there to the straits. I was on deck at that time; I was on deck all the while of my watch; I was on board of the schooner Ethan Allen; I was captain on deck at the time. The vessel was steering west at the time. We had the squaresail furled and main topmast staysail; everything was set but them. It was pretty dark, and we carried these on, as we wanted to crowd her up into the straits, as it had the appearance that the wind was coming ahead. We were close-hauled all the time from about Forty-Mile point to the straits, about ten miles, and all we could do to get in the straits without making a tack. We followed the land close in. I thought the wind was a little freer close in than outside.

2nd cross-int. If, in answer to the 4th interrogatory, you state the direction of the wind between 2 and 3 o'clock a. m. of November 24th, 1864, or at any other time, state truthfully and fully at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

Ans. As above stated, I was on deck, and my watch. I carefully observed the direction of the wind between 2 and 3 o'clock of the morning of November 24, 1864. Nothing particular occurred
100 at that time except that we trimmed the sails to lay the land close on shore.

H. W. JONES.

Subscribed and sworn to before me, this 12th day of April, 1865.
PHILLIP A. HOYNE.

WILLIAM MCFADDEN, a witness produced on behalf of the defendant, called and sworn.

Interrogatory 1st. What is your name, age and occupation, and where do you reside?

Answer. My name is William McFadden; I am betwixt 38 and 40 years of age, can't be certain which; I am a sailor by occupation, it always has been my occupation; I am a master mariner; I live in Milwaukee.

Int. 2d. How long and in what capacity have you sailed, and upon what waters?

Ans. I have sailed about twenty-five years; as boy before the mast, mate, master, and second mate; both on salt and fresh water; about thirteen years on salt water, about twelve years on the lakes.

Int. 3d. Where was you on the night of the 23d of November and morning of the 24th of November, 1864?

Ans. I was off Point Aux Barques on the night of the 23d of November, 1864; on the morning of the 24th of November, 1864, as near as I can recollect, between the hours of two and four o'clock, I was about fifteen miles to the eastward of Ottawa light, Saginaw bay.

Int. 4th. From what direction was the wind on that night, and from what direction was the wind between 2 and 3 o'clock of the morning of the 24th of November, 1864?

Ans. On that night and morning the wind was south-southwest, a little baffling with us; the wind was about the same direction between 2 and 3 o'clock of the morning of the 24th of November, 1864.

Int. 5th. State whether there is any usage on the lakes for vessels on leaving port to provide themselves with torchlights. If yea, what is the usage prevailing, how generally is it complied with, and what use is made of the torchlights by vessels in the course of their voyage?

Ans. There is a usage for vessels on leaving port to provide themselves with torchlights; it is necessary for them to carry
101 them, to show in case of collision, and what position the vessel may be in when approaching each other, to show the position the sails are in; it is generally complied with by sailing vessels.

Int. 6th. How should signal lights, carried by sailing vessels, be secured, and where placed so as not to be broken or carried away by the sea? State if they can be so placed and secured, and how.

Ans. They should be placed so as not to be carried away by the sea; they ought to be secured so as not to be carried away. Square-rigged vessels should have their lights in different position from fore-and-after; some have them placed forward on square-rigged vessels, and some have them on the quarter, but they don't do so well there as forward; fore-and-after vessels ought to have them placed forward on the rail; it is the safest place for them that I know. I think the best way to secure them is to place them on a stand or crane from one and a half to two feet above the rail, on fore-and-aft vessels; every man has them to his own fancy. So far as my judgment goes, that is the best place for them to be on fore-and-aft vessels, and I know they can be so placed and secured forward on the large class of fore-and-aft vessels.

7th int. What are the duties and office of a second mate on board a sailing vessel on the lakes; to whose watch does he belong; and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess; and if not, why not?

(On this 23d of June, 1865, libellants' proctor, at the hearing, objects to the evidence as to the duties of the 2nd mate.)

Ans. That is a question that I don't like to answer at all; I differ

from other people on that; I don't want to make any statement in regard to it; he belongs to the captain's watch, he has charge of the captain's watch; he is there for attending to trimming of the sails, and has command of the deck when the captain's absent. The qualifications of the second mate ought to be equal to that of the captain, but is very seldom such men can be found.

Last int. Do you know of any other matter or thing of benefit or advantage to the parties in this suit? If yea, set forth the same fully.

Ans. There is one thing which I wish to speak of in regard to the captain, or whoever had charge of the deck of the Perseverance at that time, in not having the proper lights aboard. My opinion is that he should either have come to an anchor or got out of the way of all other vessels around him in such a place as the straits is. I should think it was the place of the captain to be on deck of his vessel in all places of danger, either in the straits or any where else; that is the place I want to be on my vessel at such time. It is the place of the captain, in case he had no proper lights, according to our new act of Congress, to keep the deck, and particularly in the straits where vessels are passing both ways; sailing vessels are not allowed, under the new law, to carry or show a bright light under way, but only carry such bright light or show it when at anchor.—(Objected to at hearing.)—Mr. Johnson, mate of the Grey Eagle, I know, and have heard the complaints against him; he has sailed along with me all the season of the year 1862; as second officer of the schooner Grey Eagle, part of the season of 1863. He was first officer along with me on the schooner E. Beausch, and part of season of 1864 was second officer of the bark Tanner along with me. I always found him to be a careful, competent man, while with me, and obeyed all orders given him. I always found him a capable officer in charge of the deck in my absence, and attentive to his duty in all respects. I always found him to be a very careful man when in charge of the deck in keeping a look-out for vessels or keeping out of the way of vessels, or anything that was required of him; and, as far as I am concerned, I would as soon have him as any man I ever had with me, in regard to an officer of a vessel; and, so far as my opinion goes, I know he is competent enough to be the mate of the Grey Eagle, in regard to working ship or in making sail and taking charge of the watch. 102

Cross-examination:

1st cross-interrogatory. If, in answer to the third interrogatory, you state where you were, state the exact locality in which you were between 2 and 3 o'clock on the morning of the 24th of November, 1864, and what were you doing at the time. If you were on board a vessel, state upon what vessel; whether you were on deck or below; in what capacity you were on board; what course was the vessel steering; under what canvass was she sailing and at what speed. 103

Ans. Betwixt 2 and 3 o'clock on the morning of the 24th of November, 1864, I was about fifteen miles to the eastward of Ottawa or

Ottawa light. I was working ship, heading to the northward and westward, on board of the bark Tanner. I was on deck all or the greater part of the night and the morning of the 24th of November, 1864, on account I had no second mate and my mate was not acquainted in Saginaw bay, and I had to attend to the work myself. I was master on board at the time. We were steering by the wind, heading from west half north to west by north, under lower canvass, topsail, and three jibs set; had gaff-topsail and staysails furled; going from seven to eight knots.

2nd cross-int. If, in answer to the fourth interrogatory, you state the direction of the wind between 2 and 3 o'clock a. m. of November 24, 1864, or at any other time, state truthfully and fully at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

Ans. About that time, as I have stated, the wind was south-southwest and baffling with us. I had charge of the vessel, and working her up Saginaw bay at the time, and I was always once in a while at the binnacle to ascertain how the vessel was heading. If I was not there myself I was asking the man at the wheel how the vessel was heading, so that she should not fall off any. When she was heading northward to westward, she was heading from west half north to west by north, and on the starboard tack going southward and eastward; she was heading southeast half south to southeast by east.

WM. McFADDEN.

Subscribed and sworn to before me this 12th day of April, A. D. 1865.

PHILLIP A. HOYNE.

104 GABRIEL GUNDERSON, a witness produced on behalf defendant, called and sworn:

Interrogatory 1st. What is your name, age, and occupation, and where do you reside?

Ans. My name is Gabriel Gunderson; I was thirty-four years of age the 13th of November last; my occupation sailing, master mariner; I live in Chicago, and have for seventeen years.

Int. 2nd. How long, and in what capacity have you sailed, and upon what waters?

Ans. I have sailed up here most of the time for 17 seasons; have sailed about 17 seasons altogether on the lakes.

Int. 3rd. Where was you on the night of the 23d of November and the morning of the 24th of November, 1864?

Ans. On the night of the 23d of November, 1864, I came to anchor under St. Helena, in the straits, with the schooner Montauk; on the 23d I was beating up the straits, and got half way up to Point Waugauchous or Fox point, and the wind struck me from about southwest, blowing hard, and I went back and hauled back to south-southwest and staid so as long as I was on deck, and I was on and off deck till about nine o'clock that night. I am not certain, but I think I

was up between 11 and 12 on deck, and looked at the weather; it was blowing hard then down the straits; the night was dark, with snow squalls, and when I came on deck, between 11 and 12 o'clock, I saw two more vessels come too under St. Helena, for head winds, which were bound up the lake; the names were the bark City of Milwaukee and bark Winslow. They came through to St. Helena in the night. This was on the night of the 23d of November, 1864.

4th int. From what direction was the wind on that night, and from what direction was the wind between 2 and 3 o'clock of the morning of the 24th of November, 1864?

Ans. I was not on deck between 2 and 3 o'clock of the morning of the 24th of November, 1864; as I have already stated, the wind during that night was from southwest to south-southwest, and continued blowing from that direction during the night; it was same
105 direction next morning when I came on deck between 5 and 6 o'clock, but not blowing so hard as during the night.

Int. 5th. State whether there is any usage on the lakes for vessels on leaving port to provide themselves with torchlights? If yea, what is the usage prevailing, how generally is it complied with, and what use is made of the torchlights by vessels in the course of their voyage?

Ans. Yes, there is such usage for vessels to provide torchlights. They are a good thing to have in case of collision now and then. I have seen many a collision avoided by showing them in time, especially if I had no lights aboard. I always provided myself with torchlights, and I think it is necessary to do so, and then when in close vicinity of another vessel.

6th int. How should signal lights carried by sailing vessels be secured, and where placed so as not to be broken or carried away by the sea? State if they can be so placed and secured, and how.

Ans. They should be placed wherever the captain thinks is the best place for them, that is, forward on the vessel. I find mine to be in the best place on each side of the forerigging, to be lashed to a screen lashed to the forerigging. I have never found any trouble with mine placed in that way and secured. I have seen them placed on the rail and secured on some vessels well enough, that is, on large vessels.

7th int. What are the duties and office of a second mate on board a sailing vessel on the lakes; to whose watch does he belong; and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess; and if not, why not?

Ans. The duties and office of a second mate on sailing vessels on the lakes is to take charge of the watch when the captain is not on deck. He belongs to the captain's watch. In selecting a second mate the same qualifications are not required, as a navigator, that the captain and first are required to possess. The reason is, the captain should take charge of his own watch in case of danger, unless
106 sick, such as in straits or rivers.

Last int. Do you know of any other matter or thing of

benefit or advantage to the parties in this suit? If yea, set forth the same fully.

Ans. In regard to lights, for instance, I come down and have lost one of my lights, and still kept on sailing in place like the straits, where there is place to come to anchor, and there should be a collision of the vessel with a wrong light, I should consider I was in fault and to blame.

(Objected to at hearing.)

Cross-examination:

1st. cross-interrogatory. If, in answer to the third interrogatory, you state where you were, state the exact locality in which you where between 2 and 3 o'clock on the morning of the 24th of November, 1864, and what were you doing at the time. If you were on board a vessel, state upon what vessel; whether you were on deck or below; in what capacity you were on board; what course was the vessel steering; under what canvass was she sailing, and at what speed.

Ans. I have already stated that there once. She was laying to an anchor under St. Helena on the morning of the 24th of November, 1864, between 2 and 3 o'clock; on board the schooner Montauk; was on deck during the night, think it was about midnight. I was captain on board. I was standing still, laying at anchor; had no canvass, was furled.

2nd cross-int. If, in answer to the 4th interrogatory, you state the direction of the wind between 2 and 3 o'clock a. m. of November 24th, 1864, or at any other time, state truthfully and fully at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

Ans. As I have stated, I was up during that night, and observed the course of the wind to be southwest by south-southwest, and found it the same next morning between 5 and 6 o'clock, when I again came on deck, so that it must have been as fair for a vessel going up as coming down.

G. GUNDERSON.

107 Subscribed and sworn to before me this 12th day of April, A. D. 1865.

PHILIP A. HOYNE.

JAMES M. KENNEDY, a witness produced on behalf defendant, called and sworn.

Interrogatory 1st. What is your name, age, and occupation, and where do you reside?

Ans. My name is James M. Kennedy; my age is about 39 years; I am a sailor by occupation, master mariner; I live in Chicago, my home is here.

Int. 2nd. How long and in what capacity have you sailed, and upon what waters?

Ans. I have for over twenty years, for most of the time, been sailing on the lakes and Atlantic and Pacific; for the last eight years have sailed on the lakes as master of a vessel.

Int. 3rd. Where was you on the night of the 23d of November, and the morning of the 24th of November, 1864?

Ans. On the 23d of November, 1864, at six o'clock in the evening, I was abreast of Thunder bay; wind then was southwest, and at eleven o'clock p. m. head was to the west-northwest of Presque Isle eight miles, vessel heading west-northwest, sheets flat aft. Then I lay down, and at half-past four o'clock in the morning of the 24th of November, 1864, hove in stays at the northeast point of Bois Blanc island; stood back to the mainland or southwest shore, then went about and fetched in the straits at six and a half a. m. of that morning, and wind setting up so that we was heading about west, and had the wind south-southwest, as noted at the time by me in this memorandum book. (The witness here referred to the memorandum book which is introduced and marked as Exhibit A, and is made a part of his deposition.)

Int. 4th. From what direction was the wind on that night, and from what direction was the wind between 2 and 3 o'clock of the morning of the 24th of November, 1864?

Ans. The wind that night, during the night, until I reached the straits, was southwest, then back to south-southwest, which
108 was six and a half in the morning.

Int. 5th. State whether there is any usage on the lakes for vessels on leaving pert to provide themselves with torchlights. If yea, what is the usage prevailing, how generally is it complied with, and what use is made of the torchlights by vessels i nthe course of their voyage?

Ans. So far as a torchlight is concerned, they are a thing that you can designate a vessel's position with; a torch will show the sails; but so far as it is being thoroughly complied with, it is not, as a general thing; vessels have them aboard, but do not use them.

6th int. How should signal lights carried by sailing vessels be secured, and where placed so as not to be broken or carried away by the sea? State if they can be so placed and secured and how.

Ans. The law requires that signal lights should be carried on the sides of the vessel as side lights. They are to be carried as side lights; there is no designatad place for them more than as a side light. I carry them in the forerigging above the sheer pole; red light to port and green light to starboard, bright light at anchor. I think that is the proper place for them, and they can be so placed and secured so as not to be broken down or carried away by the sea.

7th int. What are the duties and office of a second mate on board a sailing vessel on the lakes; to whose watch does he belong, and are the same qualifications sought for or required in the selection of a second mate, as a navigator, that the captain or first mate are required to possess; and if not, why not?

Ans. There is not that precaution used in selecting a second mate, that there is in selecting a first mate, neither is there the same precaution used in selecting a first mate, that there is in selecting a mas-

ter, the duties of the second mate is to take charge of the starboard watch while the captain is below, and obey orders in all things; the reason why is, that on the ground of a navigator, the second mate would not do for a first mate, nor yet as master; the master must
109 make up for the deficiency of all his crew.

Last int. Do you know of any other matter or thing of benefit or advantage to the parties in this suit; if yea, set forth the same fully?

Ans. I think of nothing else.

Cross-examination.

First cross-interrogatory. If, in answer to the third interrogtory, you state where you were, state the exact locality in which you were between 2 and 3 o'clock on the morning of the 24th of November, 1864, and what were you doing at the time. If you were on board a vessel, state upon what vessel, whether you were on deck or below, in what capacity you were on board, what course was the vessel steering, under what canvass was she sailing, and at what speed.

Ans. I was master of the schooner Shook, and was about fifteen to twenty miles east-southeast of the straits; at that time I was below, remained there till about half past four. I was steering west-northwest at that time by the wind. I was carrying the mainsail, foresail, forestaysail, jib, and flying jib, light sails in, that is jib-topsail and gaff-topsails, from six and a half to seven miles an hour.

2nd cross-int. If, in answer to the 4th interrogatory, you state the direction of the wind between 2 and 3 o'clock a. m. of [of] November 24th, 1864, or at any other time, state truthfully and fully at what particular time, how carefully you observed the course of the wind at the time, and what you did to ascertain and determine the course of the wind.

Ans. I had the vessel by the wind heading west-northwest; that would determine the course, and at that time was about fifteen to twenty miles east-southeast of the straits. The vessel was by the wind, and had to make a west-northwest course, which I could not do, until I reached the straits at six and a half a. m.; then the wind let me up so that I could head west, wind at that time being
110 light and west south-southwest. It was necessary to make a west-northwest course; she was on that tack, when I went below by the wind about eight miles to the northwest of Presque Isle.

J. M. KENNEDY.

Subscribed and sworn to before me this 12th day of April, A. D. 1865.

PHILIP A. HOYNE, *Com'r.*

UNITED STATES, *Northern dist. of Illinois ss:*

I, Philip A. Hoyne, a commissioner appointed by the circuit court of the United States and for the northern district of Illinois, in the eighth circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing depositions, and the fact is that same was taken in pursuance of the commission hereto attached.

I further certify that notification of the time and place of taking said deposition was made out.

I further certify that on the twelfth day of April, A. D. 1865, I was attended by the witnesses, who were of sound mind and lawful age, and the witnesses having been by me carefully examined and cautioned and sworn to testify the whole truth, the depositions were by me reduced to writing in ths presence of the witnesses, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name, and affixed my seal this twelfth day of April, A. D. 1865.

[SEAL.] PHILIP A. HOYNE,
U. S. Commissioner, Nor. Dis. of Ill's.

[Stamp.]

111 *Exhibit A.—Extract from memorandum book.*

23, 8 a. m.—Wind N. N. W., snow all night; no signs of clearing up; got to the northward of Thunder bay.
23, 12 m.—To E. N. E. of Thunder bay ten miles; clearing up; lite wind all day; say got to the westward; will go to the S. W.
23, 6¼ p. m.—Thunder bay lite, bearing S. W. by S., three miles; wind S. W.; good breeze.
24, 6¼ a. m.—In the straits; wind S. S. W.; looks like snow.
24, 9 a. m.—Abreast Old Mackinaw; wind S. W. by S.
24, 10 a. m.—Between Old Mackinaw and St. Helena, dead calm.
24, 11 a. m.—Got lite wind from N. W.
24, 4¼ p. m.—Hove in stays, Pt. Waushonee tower clost aboard; wind W. S. W.; getting lite.
24, 12 p. m.—Hove in stays at Little Traverse pt.; wind S. S. W.

District court of the United States, district of Wisconsin.

JOHN GREENING, owner, and CHARLES N. Deott, master,
against
THE SCHOONER GRAY EAGLE, HER tackle, apparel, and furniture—Gido Phiester and Nicholas Johnson, claimants.
} In admiralty.

Depositions taken in the above cause before Francis Bloodgood, circuit court commissioner, at his office, in the city of Milwaukee, in said district.

On behalf of claimants.

DECEMBER 6*th*, A. D. 1864.

Present: Asahel Finch, esq, for counsel for libellant; Jno. H. Van Dyke, esq., of counsel for claimants.

The claimants call as a witness in their behalf—

T. F. BENNETT, being by the comm'r first duly sworn, did depose and say :

I reside in Detroit, Michigan. I am about thirty-five years of age. My occupation is a mechanic usually. I have sailed
112 some. I have been off and on on water craft of one kind another, barges, tugs, scows, and sail-vessels, for three years and more. On the morning of 24 Nov'r last, I was on the schooner Gray Eagle in the straits Mackinac. I was there in the capacity of a seaman; at about from two to three o'clock I was in the first mate's watch. I was standing on the starboard of the Gray Eagle forward, and most of the time about as far forward as I could get without getting a top of the gallant fore-castle, as I call it. That night something unusual happened; some time after two o'clock, probably about half past two o'clock in the morning, we ran into the schooner that they say was the schooner Perseverance ; after two o'clock, on that morning; Hugh Leech was with me on that watch. It wasn't properly either a light or dark night. It was somewhat thick; still you could see a good ways. I should call it something of a dark night. It was cloudy.

Ques. Go on and tell us what transpired before and up to the collision.

Ans. The first that I saw, I saw what I made to be a red light. It was some distance off on our port and weather side. After seeing this red light awhile, it disappeared, and shortly afterwards I saw a white light where the red had been. After looking at it a little, I took it to be a vessel's light lying at anchor. We neared the light during this time. It was to the windward of us, so that I supposed we were going to pass to the leeward of it. We neared the light, and I hadn't considered it dangerous ; didn't suppose we were going to collide with it, till it got quite near and changed its course, or seemed to. It seemed to move ; the light did then ; it was moving and came across our bows. I spoke to Mr. Leech, who was on the port side ; said I, "Do you see that fellow's light; it's coming nearer to us than I like to see it;" and I told him we had better speak to the mate, and at that Mr. Leech just stepped forward, and took a look at the light, and stepped aft, and called to the man at the helm ; said he to him, "Hard down;" but during this time, and I will say from about the time this light seemed to change its course and
113 came towards us, I heard some one from the approaching vessel crying out ; they said something, but I did not know at first what they said; but as they got near, I heard them halloa, "Keep your luff, keep your luff." It wasn't probably over three minutes from the time the light changed its course till we struck the approaching vessel. The Perseverance was on our port side, and ahead when she changed her course, and I heard them cry, "Keep your luff ;" she changed her course and came right under across our bows.

Ques. How near was the head of your vessel to the head of the Perseverance when you heard the cry, "Keep your luff?"

Ans. I couldn't say positive. She was very close. I don't think two minutes elapsed from the time I heard the cry, "Keep your luff." When they made this cry, they were to the port side of us.

Ques. If the Perseverance had ported her helm instead of starboarding it, where would she have gone to; how would she have passed you?

Ans. I should claim that she would have passed us on our port side.

Ques. You state that Mr. Leech, who was on the look-out with you, after looking over the bow, ran aft, and cried, "Helm hard down;" what order did the mate give?

Ans. I couldn't say. I was forward and he was aft.

Ques. Do you know as a matter of fact whether your helm was put up or down?

Ans. I do not of my own knowledge.

Ques. Were you able to make out this white light, after you saw it and supposed it was a vessel in motion?

Ans. I did not suppose it was a vessel in motion until it changed its course and turned its broadside to us, and I saw its canvass then, and the time was short, then, from that time till the time we struck her.

Ques. What do you mean by the expression, "the time was short then?"

Ans. That it was a very short space of time from the time I saw the vessel change her course till we collided with her, probably not over two minutes, probably less.

114 Ques. What was the reason you did not make it out to be a vessel in motion before?

Ans. From seeing only one white or bright light instead of a red and green one both, it not being customary for a vessel in motion with only one white light. A white light, as I understand it, indicates a vessel at anchor; on coming to anchor, they take in their signal lights, and hang out a white light in the rigging.

Ques. If the Perseverance had not changed her course coming across your bows, would there have been any collission that night?

Ans. I think not; don't see how there could have been.

Ques. What could the Gray Eagle have done that was not done, which would have prevented the collision?

Ans. Nothing that I see. After the Perseverance changed her course, if we had put our helm hard down, we might have passed her on the starboard, but it would have been very close, and I don't know as we could have done it. The time was so short and we were so close.

Cross-examination:

Ques. What portion of the three-years' time you have spent in sailing have you been on board sailing vessels?

Ans. Well, probably one-third of the time.

Ques. Where have you sailed; on what waters?

Ans. Lake Huron, Lake St. Clair, and Lake Erie, previous to coming up here this time. I had never been here before. All that I have sailed aboard vessels this year, has been on sailing vessels. Previous to my coming aboard the Gray Eagle, I had been 18 days sailing this year. I have been engaged at my trade this year.

Ques. When you first saw the signal lights on the Perseverance, about what distance were you from it?

Ans. I should say the first light I saw, the red light, might have been a mile distant.

Ques. What space of time intervened after seeing the red light and its disappearance?

Ans. From five to ten minutes.

Ques. You knew the red light was a signal for a vessel in motion?

Ans. Yes, sir.

115 Ques. Did you call the attention of the mate or wheelsman to the red light when you first saw it?

Ans. I think not. It was so far away, and to the windward, that I did not consider any danger from it.

Ques. How long after you first saw the white light before the collision took place?

Ans. I couldn't tell exactly. I shouldn't think it exceeded ten minutes.

Ques. Did you call the attention of the mate or wheelsman to this white light immediately after discovering it?

Ans. I believe that I haven't told that I called the wheelsman or mate's attention to any light. I did not call the mate or wheelsman's attention to it.

Ques. When the order was given to put the helm hard down, was it put down?

(Objected, to because there is no proof that there was such an order given.)

Ques. When Mr. Leech called out to the helmsman to put the helm hard down, was it put down?

Ans. I don't know.

Ques. How could you see the lights on the Perseverance at the windward, when you were on the starboard side of your vessel?

Ans. I saw it across our bows between the stay-sail boom and the de gallant forecastle deck.

Ques. Did not the jib obstruct the view so you couldn't see it?

Ans. Not in looking where I was, because I was back and under the jib; the jib didn't come down there by a good ways.

Ques. After you saw the lights, the red light and the white light, did your vessel change its course before the collision?

Ans. I couldn't say, sir, that it did.

Ques. After seeing the lights, was any order given to change the course of your vessel besides the direction that Leech gave?

Ans. I couldn't say. I was forward, and the officer of the deck was aft.

Re-direct :

116 Do you know whether the officer of the deck heard Leech's cry at all?

Ans. I couldn't say positively that I do.

J. F. BENNETT.

Sworn to and subscribed before me.

F. R. BLOODGOOD,
U. S. Court Com'r.

HUGH LEECH, being by the com'r first duly sworn, did depose and say:

I am about twenty-five. I was on board the Grey Eagle when she collided with the Perseverance on 24 Nov., 1864. I was a seaman aboard her on the look-out. I have been a seaman for the last five or six years. The collision took place in the straits of Mackinaw. It was between two and three o'clock in the morning. It wasn't very dark at the time; it was kind of cloudy; but a man could see a great ways, quite a distance. No daylight at that time on that day.

Ques. What do you mean by its being light?

Ans. I mean that the night was not very dark; our vessel was heading up.

Ques. Do you know her course?

Ans. Not exactly. I believe she was heading west by north half north, or somewhere thereabouts. It must be that, or somewhere about that, because she was heading up.

Ques. Do you know how the wind was?

Ans. I think the wind was south by west, or thereabouts.

Ques. Who was at the wheel?

Ans. Mr. McKay.

Ques. Where was your position on the look-out?

Ans. I was between the forerigging and the windlass end on the port side.

Ques. How long were you there before the collision?

Ans. Probably an half hour, more or less.

Ques. Just tell us what you saw.

Ans. I saw a bright light. I took it to be a light ashore. I didn't think it a vessel's light, because a very few vessels carry a white light now.

Ques. When did you first make it out to be a vessel's light? How close was she then to your vessel, and how was she heading in regard to your vessel?

Ans. When I first made it out to be a vessel's light, she was
117 far enough to the windward to clear our port side. She was heading clear of us to windward.

Ques. How near was she at that time?

Ans. She was twenty or twenty-five rods from us, more or less. She was pretty close.

Ques. If she had kept that course, would there have been any collision?

Ans. I don't believe there would.

Ques. If she had ported her helm, how far would she have passed clear by you, and on what side?

Ans. She would have cleared us on our port side, but pretty close.

Ques. Did she go clear of you?

Ans. She did not. The vessel went right across our bows.

Ques. Did she go out of her course to do so?

Ans. Yes, sir; so soon as I seen her going across our bows, I sung out to put the wheel down.

Ques. How close was she to you then?

Ans. I suppose about fifteen rods, pretty close; putting the helm down was the only chance, if any, to save the vessel. I don't say there was any. The Grey Eagle struck the Perseverance about twenty feet from the stern. When I sung out to put the wheel down, the mate sung out to put the wheel up. I sung out close after again to put our wheel hard down. I don't know how the wheel was put.

Ques. With the course that the Perseverance was running, across your bows, you striking her twenty feet from her stern, she having approached you head on, was not the proper order, according to the rules of navigation, the one given by the mate, "hard up;" was not the order given by the mate the right one?

Ans. Yes.

Ques. How was the Perseverance heading, as regards your vessel, in approaching your vessel before she turned across your bows?

Ans. She was heading clear of us to the windward.

Ques. How far from "head on" to your vessel?

118 Ans. It might be about three quarters of a point to windward from head on?

Ques. What lights was the Grey Eagle carrying?

Ans. A red on port side and a green on her starboard.

Ques. Were your lights the regulation lights?

Ans. Yes.

Ques. What was the reason you did not make out that this Perseverance was a vessel approaching you?

Ans. Because very few vessels lately are carrying white lights.

Ques. What kind of anchorage is there in the straits where this collision took place? Is there good anchorage?

Ans. Yes; there was some.

Ques. Was there any difficulty in coming to anchor along there in the straits?

Ans. No; but they generally come to on one side or the other to allow vessels to pass.

Ques. From where you first saw the bright light, which proved to be the light of the Perseverance, how far was it from where the collision took place; and how far had this white light moved from where you first saw it to the point where the collision did take place?

Ans. I believe it was about three quarters of a mile or a mile; that is, where I saw the light first; but I saw it was a vessel's light

before he kept away; but I thought there was no danger when he was to windward.

Ques. If that white light had been a vessel's light at anchor when you first saw it, would the Grey Eagle have come near to her if the light had remained stationary?

Ans. Yes; she would have come near. The light was pretty near ahead, to the windward, if anything.

Ques. Would there have been any danger of a collision if the Perseverance had remained stationary when you first saw the light?

Ans. There would have been no danger that I could see.

Cross-examination:

Ques. If when the order was given to put the helm hard down, and it was put hard up, and your vessel struck the Persever-
119 ance on her quarter, it the helm had been put hard down, in your opinion, is it not certain there would have been no collision?

(Objected to. First, there is no evid ence that there was an order given by any officer on deck, or any one authorized to give the order, to put the helm hard down. Second, it is calling for the opinion of the witness upon the effect of an improper order.)

Ans. May be there would, and may be there would not. To put our helm down was the only chance to clear, if there was any chance at all.

Ques. In putting the helm hard up, was it almost certain that a collision would take place?

(Objected to.)

Ans. Yes, of course.

Ques. In view of the situation of the two vessels, with the design of avoiding a collision, which would have been the proper order to be given, to put the helm "hard down" or "hard up?"

(Objected to, because the regulations prescribe the order.)

Ans. At the time I sung out to put the wheel down, if there was any chance to clear, that was the chance. When the Perseverance started across our bows, if there was any chance to clear her, it was to put our wheel down.

Ques. Where was the mate during all this time when the two vessels were approaching and a collision was likely to take place?

(Objected to, because the question assumes a collision was likely to take place when the vessels were approaching, and the evidence don't so show.)

Ques. Where was the mate all the time for fifteen or twenty minutes before the collision?

Ans. He was aft of the midship hatch.

Ques. How could it be when you say the Perseverance was to the windward of you, that, after you had put your helm hard up, she ran one or two minutes before you struck her on the quarter?

(Objected to, because the wit's has not so stated.)

Ans. I don't believe I said the wheel was put up a minute or a half minute before we struck her. There is a mistake about that;

120 because, so far as I know, there was not an order given on the Grey Eagle till the Perseverance started to go across our bows.

Re-direct:

Ques. How long was the cry by you to put the helm down before the vessel struck?

Ans. About a minute and a half.

Ques. How long before the vessel struck was it that the mate gave the order to put the helm hard up?

Ans. May be it was a minute and may be it was a minute and a half. It was a very short time any how.

Ques. How close were the vessels together then?

Ans. I don't know; it was very close.

Ques. You have stated that with the Perseverance crossing your bows from windward to leeward, so close as she then was, that the only chance—if there was any chance—to avoid the collision, was to put the helm hard down; was it proper for the Perseverance so to cross your bows?

Ans. No.

Ques. How could the officer in command on the deck of the Grey Eagle anticipate or know that the Perseverance would attempt to leave her course and run under the bows of the Grey Eagle so close?

(Objected to generally.)

Ans. He could not know it, unless that he would see it.

Ques. How could he see it from his position in time to prevent a collision, the Perseverance carrying only a white light on the poll bit, and her forward sails up?

(Objected to generally, and for the reason there is no evidence that her forward sails were up.)

Ans. Well, he could see the light to windward.

Ques. Now, tell us how he could see the light when she passed under your bow?

Ans. Well, I do believe the mate didn't know that she was going to the leeward till I sung out.

Mr. Finch here asks:

Ques. Was it not the duty of the look-out to report to the officer of the watch any danger ahead?

121 Ans. It was reported as soon as there was any danger, and that was when she started across our bows.

Ques. When the Perseverance started across your bows, as near as you stated she crossed your bows, was there danger then of a collision?

Ans. Yes.

Ques. How great was the danger?

Ans. There was danger of collision when she started to go across our bows.

Ques. Was it easy to be avoided on board of the Grey Eagle?

Ans. It was not.

Ques. Why not?

Ans. Because the two vessels were so close to each other when the Perseverance started to go across.

Ques. From the time you cried out, "Helm hard down," you started to run aft, didn't you; and what did you start aft for?

Ans. I did start aft. I started aft so that the man at the wheel or the mate would hear me.

Ques. Had you got to where the mate stood before the vessel struck?

(Objected to, because he hadn't stated that he got to where the mate stood.)

Ans., No, I didn't; because I didn't want to. As soon as I sing out, the mate answered me.

Ques. What did you do then?

Ans. I sing out, "Hard down," and the mate sing out, "Hard up;" that is the answer that I got from the mate.

Ques. What did you do then?

Ans. I turned back forward, and when I came forward I thought it was better to put the wheel down; and then I started back and called to the man at the wheel to put his wheel down.

Ques. Where was the mate then?

Ans. He was aft of the midship hatch somewhere.

Ques. Why didn't you call to the mate instead of the wheelman?

Ans. I was afraid it would be too late; afraid it wan't time.

Ques. Didn't you know that the wheelman couldn't obey
122 your call, and that it must come from the officer in command of the deck?

Ans. Yes.

Ques. You state that the mate was aft in the middle hatch. Where do officers in command of the deck usually take their stand?

Ans. Mostly about that part of the deck.

Ques. You state that you cried out, "Hard down;" that the mate ordered, "Hard up;" which was the proper order?

(Objected to generally, and because it is already answered,)

Witness enquires: According to law? Counsel says, Yes. Witness then—

Ans. To put the wheel up.

Re-cross-exami'n:

Ques. Did the mate understand you when you cried out to put the helm hard down?

Ans. I couldn't tell you; I have just stated before the answer he gave.

Ques. If he had understood you, would he not answered you by repeating "hard down," or words to that effect?

Ans. I don't know anything about that.

Re-direct:

On sheet 8, folio 31, you are asked the question, "In putting the helm hard up, was it not almost certain that a collision would take

place?" you answer, "Yes, of course;" what do you mean by your answer; whether from the then position of the vessels it was almost certain to take place, or that putting the helm up made it almost certain to take place, or what?

(Objected to generally.)

Ans. I mean I thought that if our wheel was put up we would be more apt to run into one another.

Ques. Do you entertain the opinion that if the wheel had not been "put up" the collision would not have taken place, or what?

(Objected to.)

Ans. May be it would and may be wouldn't.

123 HUGH LEITCH.

Subscribed and sworn to Dec. 6, 1865, before me.

FR. BLOODGOOD,
U. S. Circuit Court Com'r.

Adjourned to Dec. 7, 1864, at 9 a. m., when the parties appeared as before, and the claimants called—

NICHOL MCINTYRE, who being first duly sworn, did depose as follows, to wit:

I am thirty-eight years of age. I was on board the Grey Eagle at the time she collided with the Perseverance, in the straits of Mackinac, on 24th Nov'r, 1864. I was a seaman. I was in the captain's watch. I came on deck before the vessel struck. I looked over the port bows and saw the Perseverance across our bows, right across from port to starboard. She was, at this time, about ten yards, more or less, from the stern of our vessel. The vessels struck in about a half a minute after I looked over the bows; the Perseverance was carrying sails. I saw her mainsail and foresail, but that was all I looked for at the time The Grey Eagle could have done nothing at the time. I came on deck to prevent the collision. It was too late to do anything.

Cross-examination:

Ques. How long were you on the deck before the collision?

Ans. About one minute.

Ques. Where were you and the capt. before you came on deck?

Ans. We were below.

Ques. Where was the capt. when the collision took place?

Ans. To the best of my knowledge, he was coming out of the cabin.

Ques. Had he been in bed prior to that?

Ans. I had been in bed, but had nothing off but my cap, coat, and boots. I don't know whether the capt. was abed or not, as I was forward and he aft.

Ques. Who was at the wheel at the time and immediately prior to the collision?

124 Ans. Hector McKay.

Ques. Is he in the room here, now?

Ans. Yes.

Ques. If the helm of the Grey Eagle had been put hard up, just prior to your coming on deck, would not, in your opinion, a collision been unavoidable?

Ans. Yes.

Ques. If the helm had been put hard down a minute and a half or two minutes prior to the collision, would not, in your opinion, the Grey Eagle have cleared the Perseverance?

Ans. She might and she might not.

Ques. If the helm being hard up, at or about the time you came on deck, and the Grey Eagle struck the Perseverance on her starboard quarter, about twenty feet from the stern, is it not your opinion, that if the wheel had been hard down, that the Grey Eagle would have cleared the Perseverance?

(Objected to, because it is speculating upon possible results and experimental manuevers in a moment of imminent danger, occasioned by the wrong movement of the Perseverance.)

Ans. She might. She was that close when I came on deck that there was no room to go either way.

Ques. You say in your answer to the last question that, when you came on deck, there was no room to go either way; what do you mean?

Ans. Because the vessel (our vessel) had no time to swing clear.

Ques. Was not the tendency of the helm being hard up, to collide with the Perseverance, more likely than if it had been hard down?

Ans. Yes.

Ques. How long have you been sailing?

Ans. Off and on, for the last twenty-two years.

Re-direct:

Ques. Did you know at the time, that such would be the effect of putting the helm up, from the position of the Perseverance as
125 seen by you from where you stood on the bow; and could the mate and wheelsman, standing aft, see the position of the Perseverance as well as you could?

Ans. I don't believe they could see her as well as I could; I knew at the time that such would be the effect of putting her helm up.

Ques. If the Perseverance had not been so far across your bows, from port to starboard, when the wheel was put up, would not the effect of putting the wheel up have been, to have passed clear of her on the port side, (your port side?)

Ans. She would hardly answer her helm to keep clear of her, being so near her at the time.

Ques. What caused this collision?

Ans. By the Perseverance crossing our bows, as far as I can see.

Re-cross-exam'n:

Ques. Do you know anything about the courses the Perseverance and the Grey Eagle were sailing, of your own knowledge, except what you discovered after you came on deck?

Ans. Not at the time of the collision.

Re-direct:

Ques. How long had you been below, before the collision took place?

Ans. About an half hour after we put the vessel in stays.

Ques. Was the Gray Eagle carrying the same sails, at the time of the collision, that she had when you went below?

Ans. Yes.

Ques. Was wind from the same quarter?

Ans. I can't answer, for I havn't been to the compass.

NICHOL McINTYRE.

Sworn and subscribed before me, this 7th December, 1865.

FR. BLOODGOOD,
U. S. Circuit Ct. Com'r.

HECTOR McKAY, called by the respondents, being first duly sworn, says:

I am twenty-one next May. I am anything that comes
126 handy, farming, sailing. I have sailed for these last two years off and on.

Ques. Were you on board the Grey Eagle, on 24 Nov. last, when she collided with the Perseverance?

Ans, Yes, in the capacity of seaman; I was in the first mate's watch; I was on deck at the time of the collision; I was at the wheel. The course of the Grey Eagle was about west-nor'west; don't know exactly how the wind was, might be south by west, three quarters west; it was not a very dark nor a very light night; it was cloudy, but you could see quite a distance; the collision took place between two and three o'clock in the morning; I had previously been at the wheel about a half an hour, more or less.

Ques. Will you go on and tell what happened?

Ans. I havn't much to say about that; I saw a light to the windward of our vessel, about twenty minutes before the collision. It was a bright light; I didn't exactly know what the light was; it was, I thought, some floating light; I didn't take much notice of it; our vessel was then steady on her course, as far as I can mind; she might be swinging a little; I don't think I could have seen the light, if it was to the leeward, for I was standing at the wheel to the windward; I was steering, and I looked, and saw it again, and it was nearer to us; shortly afterwards I heard a cry out forward, which I did not understand what it was for, but I understood it was to get out of the way of a vessel, and then I heard, "Put your wheel down;" and then the mate answered, "Put your wheel up;" and after the wheel was put up the collision took place.

Ques. When you saw this light to the windward, how near ahead of you was it?

Ans. It was not far from ahead, I should say.

Ques. Just state what brought about this collision.

Ans. I took it that she went across our bow; that she put her wheel astarboard.

Ques. If she hadn't put her wheel astarboard, how would the vessels have passed?

Ans. To the best of my knowledge, she would have passed
127 us on the port bow; that is the way I took it.

Ques. Did the Grey Eagle keep on her course up to the time that you were ordered to put the wheel up, just before they struck?

Ans. Well, a few minutes before that the mate ordered me to keep her away a point, and I did so.

Ques. After you kept her away point, how was this light, to the windward of you still?

Ans. Yes, sir; I took it to be to the windward.

Ques. After you kept her away a point, some minutes before the collision, was there any other order or change of course up to the time you were ordered to put the helm up?

Ans. No. I kept on that course as near as I could.

Ques. About what was that course?

Ans. About west-nor'west, as far as I can mind.

Ques. About how far from you, at this time, was the bright light which you saw, and how far to the windward of you; that is, when you put her off?

Ans. I can't exactly say; I thought she was far enough to clear us any way.

Ques. With the two vessels in that position, the Perseverance being to the windward of you, as you state, before she crossed your bows, if the Perseverance had put her helm up, could there have possibly been a collision?

Ans. I think that is what she did do, put her helm up. I don't think she could have gone across our bows without she put her helm up.

Ques. With the Perseverance ahead of you and to the windward of you, before she put her helm astarboard, across your bows, if she had ported her helm, could there have been a collision between those two vessels, and how far from you, on your port side, would she have passed?

Ans. By porting her helm in time, she would have passed quite away to the windward of us; that is what I thought, to the best of my knowledge.

Ques. If the Perseverance being ahead and to the windward of you, you steering west-northwest, if the Perseverance had
128 ported her helm while windward of you, could she in any way have got under your bow with her starboard next to you?

Ans. I don't think she could, by the look I got of her.

Ques. How near was the Perseverance to you before you made out this white light to be a vessel's light?

Ans. She was so near that I could see her fore and aft sails, and I took it to be a vessel; I was pretty certain it was.

Ques. Let us know about how near she was to you then?

Ans. She couldn't be far away; may be she was within twenty-five yards, more or less.

Ques. Did you know before you struck her that she had started across your bows?

Ans. No, sir; I didn't know, because I wasn't forward to see.

Ques. Did you have any notice, by proper light or otherwise, of the change of course of the Perseverance from windward to leeward, until after you struck her and saw her position; and if so, what?

Ans. I didn't see no different lights.

Ques. Did she show anything to let you know her change of course?

Ans. Not that I saw.

Ques. How close were you on the Perseverance when this cry "hard down" was made by Mr. Leech forward of your vessel?

Ans. We were pretty close.

Ques. Where you so close as to make the danger of collision pretty certain?

Ans. It scared me any way.

Ques. Why did it scare you?

Ans. I think, when a man is in danger of his life, it is enough to scare him.

Ques. Did you consider yourself in danger at that time?

Ans. Yes, I did.

Ques. Tell us why. Was this cry from the sailor forward unusual, this cry of the sailor to the wheelman instead of the officer of the deck? What I mean is, if there was not imminent danger and the look-out had had time, would he not have communicated what
129 he had to say to the officer in charge of the deck instead of calling to the wheelsman?

Ans. If there had not been danger, the look-out would have communicated to the officer of the deck instead of calling out to me at the wheel.

Ques. Just go on and detail what made you then apprehend danger.

Ans. Why if I saw danger of both vessels sinking, we hadn't time to save our lives; I didn't say we wouldn't, but may be we couldn't; this is enough to scare any one.

Ques. Did you have any knowledge at that time of what the exact position and course of the Perseverance was; I mean at the time the man cried out from forwards?

Ans. By the sight I saw of her lights, I thought our best plan was to put our wheel up; that was what I thought at the same time, anyway; I didn't say whether it was right or wrong.

Ques. Why did you think so at that time?

Ans. I thought so, because I thought she was coming to the windward of us.

Ques. Did you so think at the time the man cried from forward "hard down," and the mate gave the order "hard up."

Ans. Yes, I thought when I heard the mate cry hard up, that he should know better than the men any way, and I thought it was best to put the helm hard up, any way, at the same time.

Ques. How long was it after the wheel was put hard up till the vessel struck her?

Ans. That is what I don't say at all, sir, that the wheel was put hard up; I say the wheel was put up.

Ques. How long was it after the wheel was put up, or about how long, till the Grey Eagle struck the Perseverance?

Ans. It may be a minute, more or less; I can't say to a second; it was not long.

Ques. What was the proper order, according to the regulations, as you viewed the vessels approaching each other?

Ans. According to law, I should think, to put the wheel aport.

130 Ques. Was it put aport?

Ans. Yes.

Ques. Did you then know, or was there any way by which you could know, and how, that if you had starboarded your wheel, you might by chance have gone free of the Perseverance?

Ans. No, sir; not that I saw at the time I put the wheel aport.

Ques. Did you know, when you put the helm up, that you were going to strike the Perseverance?

Ans. I did not.

Ques. Was there anything by which you could possibly know, at that time, that putting up your helm would tend to bring the vessels together; and if so, what?

Ans. No, sir; not that I see, for I had not much time to think; I went by the officer's orders.

Cross-examination:

Ques. You say that when the cry from the look-out to you to put the helm hard down, the mate ans'd to put it hard up; but you say you didn't put it hard up, but that you put it up. No, state how much you put it up.

Ans. There was cover over the screw, and I couldn't say how far I put it up; I put it up any way. The tiller I couldn't see.

Ques. Did you consider yourself bound to obey the orders of the mate?

Ans, Yes, I always consider myself bound to obey the orders of the officers when I am aboard a vessel.

Ques. Why then did you not put your helm hard up, when the mate ordered you to do it?

Ans. Well, may be there is a good many reasons, and may be I hadn't time; I can't say; all that I can say, I put the wheel up; how hard it was up I can't say; may be she was up and may be she was not up altogether; she may be pretty near hard up, and it may be she was not; I can't say whether she was or not.

131 Ques. Can you tell when the wheel is hard up?

Ans. Yes, sir; I think I can.

Ques. Do you mean to say you didn't know whether the wheel was hard up or not?

Ans. When I got the wheel up so that I can't get it any farther, I consider it hard up.

Ques. Did you have the wheel up so that you couldn't get it any further?

Ans. That is what I don't say; that is what I can't say; the wheel wa put up, but how much I can't say.

Ques. When the collision took place, were you at work at the wheel, or had you ceased trying to put it up?

Ans. I think I stopped the wheel at the time she was going into her.

Ques. Would not the Grey Eagle have been more likely to have passed the Perseverance if the helm had been put hard down, in your opinion?

(Objected to generally, and that it is merely speculating on chances in a moment of imminent danger.)

Ans. Yes, sir; I think she would.

Ques. You have stated that just previous to the collision, the Perseverance was crossing your bow. State what portion of the length of the Perseverance from her stem had crossed your bows at that time.

(Objected to, because question is indefinite, and don't fix any time.)

Ans. I think you can judge for yourself, when she struck within twenty feet of her stern, as far as I know; I don't know how long the vessel was.

Ques. From the position of the two vessels when you were ordered to put the helm hard up, and the helm being put up, was not, in your opinion, a collision inevitable?

(Objected to as immaterial, for the reason that it calls for the opinion of the witness formed since the collision, and not from facts known on board of the Grey Eagle at the time of the collision.)

132 Ans. I think I have stated that already; I believe I have stated I did not know a collision would have taken place by putting the wheel up; a collision was not certain, in my opinion, at that time.

Ques. You have stated that the order to put the helm hard up, under the circumstances in which the two vessels were placed, (or in the [the] position they were placed,) was a proper order, and in conformity with the regulations, state how you know that, and also what regulations prescribe the order.

(Objected to, because the question is improper, and not for the purpose of eliciting the facts involved in the case, but to confuse the witness; and that the question should be, what the rule of navigation is that is followed under like circumstances, and not to require from a seaman before the mast to define the legal instructions and regulations regulating commerce.)

Ans. I said I thought it was the order, according to law, to put the wheel up. I know it is according to law by men telling me that knows about it themselves, and that ought to know.

Ques. Who are the men that told you that that order was according to law?

Ans. It is more than I can mind, no more than we have been talking about it lately aboard of our own vessel, which I heard our own officers stating.

Ques. Did your own officers make this statement before the collision, that this was a proper order, or since?

Ans. I think it was since that we were talking about it. It was since.

Ques. Is all your knowledge, that that was a legal order, derived from the officers and men of the Grey Eagle?

Ans. I am not going to answer that question, and I won't do it.

(Mr. Van Dyke requests the com'r to instruct the witness that, if he does know further, it is his duty to state. If not, he can say so.

133 And the com'r so instructed the witness, and also, that he was bound, to the best of his ability, to answer all proper questions put to him, and that this was a proper question.)

Ans. (The witness then answers:) I have answered before, and now answer, that it is all my knowledge on the subject; but I didn't say but I heard it talked of, and heard at different times before, but that I didn't mind of now.

Ques. Have the officers or men of the Grey Eagle, or any one of them, told you within a few days that you were to be a witness, and, also, that that was a proper order?

Ans. They have not told me that I would be a witness; not as I have a mind of, because I knew myself that I would be a witnes.

Witness inquires: How many days do you mean by a few days? and then adds: I heard them saying so, but I don't know how many days it was.

Ques. How long were you at the wheel before the collision?

Ans. About a half an hour, more or less.

Ques. How many times did the mate, during that time, tell you to keep the vessel off?

Ans. I think twice. I suppose he meant the vessel to go off when he ordered the wheel up, and he had told me before that to keep her off a point.

Ques. How long before the collision was it that the mate first told you to keep your vessel off?

Ques. It was a very short time. I couldn't say. I think I had got her steadied. I had her a few minutes steadied.

Ques. After you put your helm up, did your vessel feel it and swing around, and how much?

Ans. She swung around, but I don't know how much. Of course, she swung around, or I could not keep her off a point.

Ques. How many points was the course of your vessel changed, on executing that order of the mate, to put your helm up?

134 (Objected to, because it is uncertain, indefinite as to which order of the mate, whether the one some considerable time anterior to the collision, or the one just at the instant of the collision, both orders being identical.

Counsel says he refers to the first order, which was to keep her off a point.)

Ans. I say I don't know exactly how far she went off.

Ques. How long after the mate told you to keep her off a point was it before the vessels collided?

Ans. A very short time; I was not long at the wheel altogether.

Ques. You answer, on sheet 19, folio 76, "Yes, sir; I think she would," to the question, "Would not the Grey Eagle have been more likely to have passed the Perseverance if the helm had been put hard down, in your opinion?" Now, when was this opinion formed by you; was it not since the collision, upon discovering the exact position of the Perseverance after the collision, or how otherwise?

(Objected to as leading.)

Ans. It was formed subsequent to the collision, and when I then saw the position the vessels were in. I think she might have got clear.

his
HECTOR × McKAY.
mark.

Sworn to and subscribed before me this 7 Dec., 1865.

FR. BLOODGOOD,
U. S. Circuit C't Com'r, &c.

AT THE OFFICE OF THE COMMISSIONER,
February 24, 1865—10 a. m.

Present: Wm. Pitt Lynde, esq., of counsel for libellants; John H. Van Dyke, esq., of counsel for the respondents.

Deposition of witnesses on behalf of the respondents continued.

CHARLES SMITH, called by respondents, being by the commissioner first duly sworn, did depose and testify:

I reside in Milwaukee, or rather six miles from Milwaukee, in town of Lake, Milwaukee county; am thirty-eight years of age.
135 My occupation is a sailor. On the 24 Nov., 1864, I was second mate on board Grey Eagle. I have ben a sailor twenty-two years, (a sailing, and stopping ashore working, and all kinds of business.) I have sailed before the mast, as second mate, and as first mate, as I could get the chance, for the past five or six years. The Grey Eagle was coming from Detroit on that trip. On the morning of the 24 Nov., 1864, I saw a light on the lee bow. I didn't know how this light was bound. I took it for a propeller.

Ques. Did you afterwards ascertain which way she was bound?

Ans. I did; she was bound down.

Ques. Did you have a collision with the Perseverance that morning?

Ans. I can't say whether we collided with her or she with us. When I came up, the vessels were stuck together.

Ques. Whose watch were you in?

Ans. The captain's.

Ques. Whose watch was it on deck at time the vessels collided?

Ans. The mate's.

Ques. Were you on deck at the time of the collision?

Ans. I didn't come on deck until they had struck.

Ques. How long before the collision had you gone below?

Ans. About five or ten minutes. I had lighted my pipe, and was sitting by the stove.

Ques. How long had you been on deck before you went below?

Ans. About three quarters of an hour.

Ques. What was the course of the Grey Eagle at the time?

Ans. West by northwest was, as I heard the captain give it.

Ques. Did you look at the compass before you went below?

Ans. Yes.

Ques. What was her course by that?

Ans. West by north.

Ques. How far were you to the westward of the Sheboygan light at the time you went below?

Ans. A mile and a half.

Ques. Were you to the northward or the southward of it?

Ans. I mean to the southward of it.

136 Ques. You were past the light, coming up?

Ans. Yes.

Ques. What do you mean by southward of the light?

Ans. Up the lake, passing the light astern.

Ques. What do you call that, westward or southward?

Ans. I call going up the lake south.

Ques. Reflect a moment as to the course of your vessel west by north, and the light on the quarter of you; how would that light bear on your vessel?

Ans. I don't know. I didn't take any bearings.

Ques. How was the wind at the time you looked at the compass, just before going below?

Ans. Southwest by south.

Ques. You state you came on deck again just as the vessels struck, and that you had been below five or ten minutes; had there been any change in the wind during that period southwest by south?

Ans. I couldn't tell; I was below.

Ques. Was the vessel carrying the same sail as when you went below?

Ans. Yes.

Ques. Had there been any change in her course?

Ans. That I don't know.

Ques. How happened it, if the watch on deck was the first mate's watch, and you were in the captain's watch, that you were on deck up to within five or ten minutes of the collision?

Ans. I was called up to tack ship.

Ques. Where did you tack ship?

Ans. In the straits. Just at the foot of Bois Blanc island.

Ques. Is that the entrance of the straits?

Ans. Yes.

Ques. Why did you have to tack then?

Ans. We couldn't lie in into the straits.

Ques. If the wind had been south or south by east or eastward of south, would you have had to tack to get in the straits?

Ans. No.

Ques. Why?

137 Ans. The wind would have been fair enough then.

Ques. How long did you remain on deck after you tacked ship and put your vessel west by north?

Ans. About five or ten minutes.

Ques. What did you see before you went below?

Ans. I saw two lights, one on her weather bow and one a little or her lee bow.

Ques. What kind of light was it on her lee bow?

Ans. A bright light.

Ques. And what on her weather bow?

Ans. A bright light, too.

Ques. Were the lights near or far off?

Ans. The light on the weather bow, I expect, was a shore light. I couldn't tell whether they were near or far off. It was a dark night.

Ques. What was the light on the lee bow?

Ans. I expect a propeller.

Ques. Don't you know the fact that the light you saw on the weather bow, and took for a light ashore, afterwards proved to be the Perseverance's bright light?

(Objected to as leading.)

Ans. That I couldn't say. I wasn't on deck.

Ques. Just tell us what transpired, within your knowledge, after you went below, up to the time of the collision?

Ans. I can't say anything. When I came on deck the two vessels were together, and they were trying to get the men saved.

Ques. What brought you on deck before the vessels struck?

Ans. The noise holloaing.

Ques. What halloaing?

Ans. I heard them sing out hard aport.

Ques. Who sang out?

Ans. That I don't know.

Ques. Was it on your vessel?

Ans. Yes.

Ques. What did you do when you heard that cry?

Ans. Jumped up and went on deck.

Ques. What did you see when you got on deck?

Ans. I saw the two vessels together.

138 Ques. Where was the Perseverance?

Ans. Across our bow.

Ques. How was she heading?

Ans. Right across the channel.

Ques. What lights had she on board?

Ans. I didn't see none.

Ques. Did you look for any?

Ans. I looked. I could see her plain enough right forward. I didn't see no light forward.

Ques. Didn't she show a white light?

Ans. I didn't see no light at all.

Ques. What did you do after the vessel struck?
Ans. We tried to get the crew of the Perseverance aboard.
Ques. After you got them aboard, what did the Grey Eagle do?
Ans. Tried to get clear of her.
Ques. Did you?
Ans. Yes.
Ques. What did the Grey Eagle then do?
Ans. Made a tack, and stood into the south shore, and came to anchor.
Ques. About what time did you come to anchor?
Ans. About four o'clock; it was dark.
Ques. After you came to anchor, what did you do?
Ans. We went below; all but the anchor watch.
Ques. Were you in the cabin?
Ans. Yes.
Ques. Who was in the cabin beside you?
Ans. The captain, our other mate, and myself, the other captain, and his first and second mate, and the cook.
Ques. Did you have any conversation there about the collision; and if so, what was it?
(Objected to as not part of the res gesta.)
Ans. The first mate of the Perseverance said it was his own fault; that he had made up his mind, on his watch, that he would hide the light and get out of the way from the vessels in time; and he had wrong lights.
Ques. What further was said on the subject?
Ans. Nothing else that I remember.

139 Ques. Did you have any conversation with, or make any statement to, the captain of the Perseverance, as follows, or anything to that effect, or anything like it, to wit:

The master of the Perseverance, Charles N. Deott, swears in his deposition, taken in this case, that, "After I got on the schooner Grey Eagle, I asked them what fool was on deck. There was a man came up to me and told me it was the mate. I asked him if he was the man. He said, no; that he was the second mate. I asked him if he was on deck. He said he was below; him and the captain. I asked him what kind of a fool that was he had for a mate. He told me he was one of the owners' brothers; a regular bull-head. He did not know enough to take his place before the mast, let alone to be mate of a vessel. He told me he had not done more than he expected, that he would sink some vessel before he would get up to Milwaukee; that he was very near sinking a vessel the night before n Saginaw bay, through his carelessness, and had two or three collisions before that."

Ques. Now, mate, did you have any such conversation as that with the captain?
Ans. No, sir.
Ques. Did you say anything to him; anything like that statement?
Ans. He came up and asked me if that was the captain's brother. (This was while we were on deck, clearing the vessel away.) I told

him, no; it was the owner's brother. That was all the conversation that I had. He turned around then and spoke to another man; who it was I don't know.

(A recess was here taken until two o'clock, p. m., when the parties appeared as before, and the deposition of the said witness was continued.)

Ques. You state that when you looked at the compass, five or ten minutes before the collision, the wind was southwest by south; when did you next look at the compass, and how was it then?

Ans. When we lay at anchor, it was then southwest by south.

(The counsel for the libellant, in due time, objected to both the last questions and the answer thereto.)

140 Ques. How long was this after the collision?

Ans. About one hour.

Ques. How long that night was the wind from that quarter, and when did it change?

Ans. It commenced on that quarter on Wednesday afternoon, 23 November, 1864; before that we had it from the north-northwest. It continued southwest by south till the Friday morning after the collision at daylight, when it changed to the westward.

Ques. Was there any variation of the wind from southwest by south from Wednesday afternoon till Friday morning?

Ans. That I don't know, because I didn't stand by the compass all the time.

Ques. Was there any change?

Ans. None to my knowledge.

Ques. What kind of anchorage is there in the straits, near where this collision took place?

Ans. Good.

Ques. Is it, or is it not, a usual place of anchorage for vessels?

Ans. It is.

Ques. What ought the Perseverance have done during the night, not having lights to show her course?

(Objected to, because it calls for an opinion which the witness is not competent to pass upon.)

Ans. Come to anchor or show a torch-light.

Ques. If she had shown a torch-light, how would that have helped the matter?

Ans We could have seen the vessel and her sails, and the way she was going.

Ques. Do all vessels on the lakes carry torch-lights?

Ans. Yes, every one I have been on.

Ques. Did the Perseverance show a torch-light that night?

Ans. Not that I saw.

Ques. During the capt's watch, where is his place, on deck or in the cabin?

Ans. On deck.

Ques. Did you ever know of a second mate being placed as the officer of the deck during the capt's watch?

Ans. No, sir.

141 Ques. Suppose that Capt. Deott got wet that evening in passing Waugoshonce point, at about seven o'clock, his watch ending at eight o'clock, the first mate's watch commencing at eight and continuing till twelve o'clock, would he have time to change his clothes and get warmed, or how much more time would he require?

Ans. He would have time.

Ques. Was it good seamanship with the Perseverance, going down the Straits of Mackinac, near where the collision took place, without the proper signal lights, and showing nothing but a white light, which indicates a vessel at anchor, to place his second mate, a young man about twenty-two years of age, in charge of the deck, and himself retire to the cabin; and if not, why not, and what should he have done?

(Objected to.)

Ans. It was not; he had the wrong light; it was not good seamanship to place his second mate in charge of the vessel; it was not the place of the second mate; it was the capt's place: he should have come to anchor, or run his own risk, having the wrong lights.

Ques. Do you know what is the narrowest part of the Straits of Mackinac?

Ans. Yes.

Ques. State what it is, and how far from where these vessels collided; I mean in the south channel, and about how wide is it there?

Ans. Somewhere near Sheboygan, it is about two miles wide; it is a little wider at the point of collision.

Ques. Don't the narrows of the straits reach from the Sheboygan light up to about twelve miles before they widen out much?

Ans. Yes.

Ques. Was it not in this narrow part of the straits where the collision took place, about two miles west of the Sheboygan light?

Yes, sir.

142 Ques. Does it not require more care and prudence in the night-time in navigating this narrow portion of the straits than where there is more searoom?

Ans. Yes.

Ques. Why?

Ans. Because it is so narrow, and many vessels meet, passing up and down.

Ques. What kind of night was that night about the time of the collision?

Ans. Dark.

Ques. At what distance on that night could two vessels see each other without any lights?

Ans. About two lengths of the vessel, about two hundred feet.

Ques. At what distance that night could the lay of the sails of either vessel be seen, so that by reference to the wind the vessel's course could be determined, without any lights?

Ans. About one hundred and fifty feet.

Ques. If two vessels were approaching each other at about the speed of six miles an hour, their united speed being twelve miles

an hour, how long would they be running over the one hundred and fifty feet?

Ans. Not very long.

Ques. Would it be more or less than a quarter of a minute?

Ans. I can't figure that up. We were not going six miles an hour.

Ques. How fast was the Grey Eagle going?

Ans. About four miles an hour.

Ques. With the Grey Eagle going four miles an hour, and the approaching vessel six miles an hour, their united speed being ten miles an hour, if both were running without lights, and you had first discovered the lay of the sails within one hundred and fifty feet of each other, (running towards each other,) would you consider that safe navigation?

Ans. No, sir.

Ques. Why would it not be safe so to navigate?

Ans. Because we would have no light; and if we didn't
143 see the lay of the sails within that space, we would not have time to get out of the way.

Ques. Meeting a vessel showing nothing but a white light, in the night-time, is there any way in which you can determine what her course is, until you get near enough to see the lay of her sails; and if so, how?

Ans. There is not.

Ques. Capt. Deott, in his deposition, swears that he should think if the Grey Eagle kept a proper look-out, as a man ought to, they could see the vessel, meaning the Perseverance, a half a mile distant, the way the Perseverance was going; how could that be?

Ans. She could not be seen; it was too dark.

Ques. If the mate on board the Perseverance, when he first discovered the Grey Eagle's lights, made both her red and green lights, distant from three to five miles, and bearing about from a half a point to a point on their starboard bow, and again saw both the red and the green light of the Grey Eagle, when the distance had been lessened one half from what it had been when the lights were first discovered, how far from "dead ahead" could those two vessels be in approaching each other?

Ans. I can't say how far; when I see both lights, I know it's time to get out of the way; they can't be far from dead ahead.

Ques. With the vessels in that relative position to each other, and distant two miles, if you please, or a mile, or a half mile, if both vessels had ported their helms, could there have been a collision?

(Objected to.)

Ans. No, sir.

Ques. How did the Perseverance get under your bows that night?

Ans. She put her helm astarboard; she couldn't have done so otherwise.

Ques. Suppose, when the Perseverance saw the approach of the Grey Eagle, the Perseverance going down the straits without
144 proper lights, she saw the Gray Eagle a point or two, or three

points, on her starboard bow, in the narrow straits, distant a mile, the Perseverance's course being east by south and the Grey Eagle's course west-northwest, and the look-out of the Perseverance should walk about on the deck and pay no further attention to it, would that be right; and if not, why not?

Ans. No; he ought to be forward.

Ques. What use would the look-out be forward if he didn't pay any attention to the approaching light?

Ans. None at all.

Ques. If the captain of the Perseverance remained down in his cabin on that dark night, and only came on deck eight or ten minutes before the collision, could he provide as well against the danger of the collision as if he had been there through his watch on duty?

Ans. No, sir.

Ques. Why couldn't he?

Ans. Because when a man comes out of the cabin from a light, he can't see no light on a vessel; he is blind.

Ques. Can he determine the bearing of a light as well as if he had been on duty during the night on his watch?

Ans. No, sir.

Ques. Could he comprehend and see the distance of the vessels as well as if he had been on his watch and observed their approach from a longer distance?

Ans. No, sir.

Ques. If the capt. of the Perseverance, from the time he got wet, at seven o'clock that evening, from the spray or a wave, and had four hours to change his clothes and get dry, what possible object or excuse could there be in his being in the cabin during his watch or any part of it?

(Objected to.)

Ans. I can't find any other excuse except that it was too cold for him to be on deck.

Ques. Would that be an excuse for the commander of a vessel?

Ans. I should think not.

145 Suppose you should learn from Capt. Deott's deposition that he was something of a Frenchman; had a wardrobe on board, valued at from two to five hundred dollars, and that he kept a woman cook aboard who slept in the cabin; would you be at loss to determine why he might imagine it more pleasant in the cabin that night than on deck?

(Objected to.)

Ans. I don't know.

Ques. Capt. Deott being in health that night, will you mention any possible excuse that would justify his leaving his duty on deck and staying in the cabin?

Ans. I do not; if he was not well, it would have been his duty to come to anchor during his watch.

Ques. You state that what brought you on deck was hearing the

cry "hard aport" on your vessel; how long was it before the collision after you heard the cry "hard aport?"

Ans. Not over a minute.

Ques. You have stated how the Perseverance was heading at the time you came on deck; how was the Grey Eagle heading at that time?

Ans. I don't know.

Ques. With the capt. of the Perseverance in the cabin, no proper lights on board the Perseverance, another vessel approaching, the second mate commissioned to go below and call the captain, nobody left on deck of the Perseverance except the wheelsman and the look-out, and the look-out swearing that he didn't observe the light after he saw it about a half mile distant until it got close on to them, what kind of a condition would the Perseverance be in to take the necessary steps to prevent a collision?

(Objected to.)

Ans. The Grey Eagle kept her course, and she, the Grey Eagle, put her helm aport. I can answer but for our vessel.

Ques. With the capt. of the Perseverance in the cabin, and her second mate gone from the deck after the capt., there being no one left on deck but the look-out and wheelsman, who was left on deck to give the necessary orders?

Ans. Nobody.

146 Ques. With the man forward placed as a look-out not looking at the lights of the Grey Eagle as she approached them, as he swears in his deposition, who was there to report the Grey Eagle's lights?

Ans. Nobody.

Cross-examination:

Ques. How far was the Perseverance from you when you first saw the light?

I don't know.

Ques. How long was it before the collision?

Ans. About five or ten minutes.

Ques. Had you at that time got through taking your tack on the Grey Eagle?

Ans. Yes. I went below after we tacked ship. Before I went below I saw a light on our lee bow, but what it was I don't know; this about five or ten minutes before the collision.

Ques. How long had you been on deck at the time when you saw this light?

Ans. About three quarters of an hour.

Ques. What had you been doing during this three quarters of an hour?

Ans. Tacking ship.

Ques. Did you tack ship more than once during that time?

Ans. We tacked twice.

Ques. Who called you from below to tack ship?

Ans. The capt.

Ques. Whose watch was it?

The mate's.

Ques. How came the capt. to call you in the mate's watch?

Ans. Every thing was stiff and cold, and the watch couldn't handle them.

Ques. Where were you when you took the first tack?

Ans. I didn't take no bearings, and I can't answer you.

Ques. How were you as to the Sheboygan light?

We were off the Bois Blanc island; I took no bearings, and can't tell as to the light.

Ques. Had you passed the Sheboygan light when you took
147 the first tack?

Ans. I don't know.

Ques. What was your course before you took that tack?

Ans. Full and by; that is, as near as you can run to the wind.

Ques. What course did the tack put you into?

Ans. That I don't know; that is the capt's business.

Ques. Is there a little bay running down from the straits, putting down by the Sheboygan light?

Ans. That I don't know.

Ques. Didn't you hear the capt. say what course you were on after you took that first tack?

Ans. No. I heard him say, keep her as full as you can.

Ques. Didn't you go to the compass before you took the second tack, and after you had taken the first?

Ans. No. I went there after the second.

Ques. Don't you know what your course was between the first and second tacks?

Ans. No. That was not on my business.

Ques. How long had you run on the first tack before you took the second?

Ans. You are making that wrong side up.

Ques. How long had you run on the first before you took the second tack?

Ans. I didn't look at the time. I can't say. Perhaps twenty minutes; perhaps an half hour.

Ques. How long did it take you in adjusting the sails and turning the vessel for the second tack?

Ans. About five minutes.

Ques. Who helped you?

Ans. I worked the foresheet alone. The mate and four sailors were at work hauling the sheets aft.

Ques. Had you discovered this bright light before you got through fixing the sails?

Ans. We had them all fixed.

Ques. How long after you took this second tack before the collision?

Ans. I went below; but, as near as I can guess, about five or ten minute.

148 Ques. You were on deck about three quarters of an hour?

Ans. Yes.

What were you doing between the two tacks?

Ans. I was walking the deck; my watch had expired at twelve o'clock; this was between one and two o'clock; I had not turned in that night; after I went down after the second tack, I laid down on the floor and had a smoke; the pipe was filled before I went below; I had hardly a chance to light it before I heard the halloaing on deck, and hurried up; I think it was the mate I heard, as near as I could guess; I did not at once go upon deck on hearing that order; I heard other noises and then went on deck; the other noise was singing out "hard aport" again; I don't know what I done between these two orders; it was about a minute or two between these two orders, as near as I can guess; on hearing the second order, I hurried on deck; they had already collided when I got on deck; I was on the stairs when they struck, and it was near sending me endways into the cabin; when I was walking on deck between the two tacks, I could just see the loom of the south shore; saw this when we took the second tack; on making the first tack, we stood from Bois Blanc island to the south shore; we went pretty close to the south shore before we took the second tack; I can't give you any idea how close we went; the night was dark; the water is deep there, and you could go close enough to jump ashore; we didn't pass the Sheboygan light on our first tack; we passed it on the second tack; I didn't take no bearings; it was not my duty, and I don't know our bearings as to the Sheboygan light at the time we took the second tack; it was to the windward; I trimmed the foresail in taking the second tack; I didn't go right back to the wheel; I don't know how long it was before I went back; I don't keep no time in my pocket.

Ques. About how long?

Ans. It is hard to tell; I walked up and down the deck.

149 and a man don't take no notice of time; I don't know why I staid on deck after we took the second tack; I was in no hurry to go below; I went back to look at the compass, to see how she was heading.

Ques. What business had you to see how she was heading?

Ans. I got privilege to go aft and see how she was heading; I had no command on that vessel that night.

Ques. Are you accustomed to go frequently to the compass and see how the vessel is heading?

Ans. Yes, when I belong aft; I had nothing to do with the steering of that vessel that night.

Ques. Did you look at that compass at any other time duing that night than the time you speak of?

Ans. During my watch, I did.

Ques. Who did you see at the compass at the time you went to see it after the second tack?

Ans. No one.

Ques. Who did you talk to about it?

Ans. The capt. was asking me how she was heading, and I told him west by northwest; I am certain it was the capt. who asked me;

when he asked me, he was on deck, on the weather side of the forepart of the cabin; the capt. had been on deck as long as I was; a little before he went up.

Ques. Do you know why the capt. thought it necessary to be on deck during the mate's watch, after having been up during the whole of his own watch?

(Objected to as secondary and impertinent to the issue.)

Ans. It is customary, when vessels are in the straits, for the masters to be on deck; out of a hundred vessels, there is not one master that goes below in the straits.

Ques. Who was in command of that vessel on that night during the mate's watch?

Ans. The mate was till the capt. came on deck.

Ques. How many times did you look at the compass during your watch that night?

Ans. That I couldn't tell you; sometimes I look often and sometimes less; just as a man feels inclined to.

150 Ques. Tell me as near as you can the number of times you looked at the compass during your watch that night?

Ans. That I can't tell you.

Ques. Can't you tell whether you looked once or twenty times?

Ans. No.

Ques. Are you certain you looked at it once during your watch that night?

Ans. Yes, I looked at it once, I am certain; how much oftener I don't know

Ques. Do you recollect any circumstances that occurred when you looked at the compass during your watch?

Ans. I told the wheelsman to keep a good full; that was my duty.

Ques. During the capt's watch, the capt. himself on deck, is it the duty of the second mate to give orders as to the steering of the vessel?

Ans. The capt. gives them to the second mate, and he tells the men.

Ques. Can you tell me what course your vessel was going when you looked at the compass during your watch that night?

Ans. Yes.

Ques. What was it?

Ans. West half northward.

Ques. What time of night was it?

Ans. From ten to twelve.

Ques. How does it happen that you recollect that that was your course at that time?

Ans. I was looking at compass.

Ques. Do you recollect now the course you were on every time you looked at the compass that night?

Ans. No.

Ques. How does it happen that you recollect those two times the course that you were on?

(Objected to, because the question is on a hypothesis not justified

by the answers of the witness, and he has not confined him-
151 self to those two times in any of his answers, or any of his series of answers, but in the one to the course of his vessel during his watch, between ten and twelve, and after he had tacked ship the second time, and thus had got on their course in the straits.)

Ans. I can't answer.

Ques. How does the Grey Eagle steer?

Ans. With a wheel.

Ques. Is she a good steering vessel?

Ans. Yes.

Ques. Is she very steady; don't she swing at all?

Ans. Very little, if a man knows how to steer her; I sailed on her one round trip, that is all; I was sailing on the lake last summer previous to that trip; I was on the schooner Guide; I don't think I am competent to command a vessel myself; I know how a vessel ought to be commanded.

Ques. Wouldn't you be willing to command a vessel yourself?

(Objected to as immaterial.)

Ans. I hain't got no vessel, and I couldn't command one on shore.

Ques. Have you confidence in your own skill and knowledge to undertake the command of a vessel yourself?

(Same objection as last.)

Ans. I guess I could.

Ques. Who was your first mate on that vessel?

Ans. John Johnson.

Ques. Is that him sitting here?

Ans. Yes.

Ques. How long have you known him?

Ans. I knew him before he went home to Norway, and have known him this summer since; he is no relation or connection of mine; Norway use to be my home; it is not now; I have never sailed with John Johnson before.

Ques. Would you like to sail with John Johnson during the season of navigation on these lakes as first mate over you?

Ans. Yes.

152 Ques. Did you come near running into a vessel in Saginaw bay the day before, or within a few days previous to the collision?

Ans. Not to my knowledge.

Ques. Did you not hear any of the officers or men on the Grey Eagle say that they came near running into a vessel in Saginaw bay?

(The style of this mode of questioning is objected to as inadmissable and objectionable in substance and manner.)

Ans. No.

Ques. Did you have any other collision besides that with the Perseverance on that trip?

Ans. No.

Ques. Do you know how many collisions the Grey Eagle had during last summer, and while John Johnson was first mate on her?

(Objected to, because it assumes a fact not proven in the case, and untrue in fact; because the Grey Eagle never had a collision while

John Johnson was first mate or master of her, or commander of the deck.)

Ans. I don't know.

Ques. Did I understand you to say that when these vessels collided the Perseverance was heading across the straits?

Ans. Yes.

Ques. Had you got on deck when these vessels struck?

Ans. I had just got on the cabin stairs when they struck.

Ques. Could you see either shore of the straits at that time?

Ans. No.

Ques. How long was it before you got back to look at the compass?

(Objected to, because the witness has not stated that he went back to look at the compass after the collision, and the question is based upon a hypothesis that does not exist.)

Ans. I don't understand the question at all; after the vessel strikes another, it is no time to look after a compass.

Ques. Did you look at the compass at all after that collision until after you got to anchor again?

Ans. No.

153 Ques. Do you know which way your vessel was heading at the time of the collision?

Ans. No.

Ques. Wasn't your vessel, the Grey Eagle, heading across the straits at that time?

Ans. She was not; she was heading up the straits; the other vessel was heading across.

Ques. If you don't know which way your vessel was heading, how do you know she was not heading across the straits?

Ans. I seen it; I wasn't so stupid.

Ques. What did you see that you know she was not heading across the straits?

Ans. I could see that on the fly.

Ques. What do you mean?

Ans. I mean the fly on the mainmast head.

Ques. You looked at that fly at that time, did you?

Ans. I did.

Ques. You looked at that before or after the collision, did you?

Ans. After; before that I was in the cabin.

Ques. How long after the collision did you notice the fly?

Ans. Between five and six or seven minutes; after the men from the other vessel had been taken aboard.

Ques. How long did you take to get those men aboard?

Ans. I can't tell; in the meantime I went down twice into the forecastle to see if our vessel was leaking.

Ques. Who was at the wheel at the time of the collision?

Ans. Hector McKay.

Ques. At the time you were getting the men of the Perseverence aboard, there was a good deal of confusion on board your vessel, was there?

Ans. No, there was not much.

Ques. Did you see those two men in the water?

Ans. No; but I heard them.

Ques. Did not all hands on your vessel do what they could to help get those men out?

Ans. Yes.

Ques. Did you see the Perseverance go down when she sank?

Ans. Yes.

Ques. Had all the hands been busy before she went down to
154 get the vessels apart?

Ans. No.

Ques. Did any of you do anything to get the vessels apart?

Ans. We tried to get the crew aboard first.

Ques. Did any of you try after you got them aboard?

Ans. Yes, Hans and another man went out and got her clear; the Grey Eagle was right on top of the Perseverance when she went down; not all on top; any one can tell how far apart they would be when they were stuck together; before the Grey Eagle went down, we had no time to do anything to get away from her; I don't know whether the wheelsman stood at the wheel all the time.

Ques. Did your vessel remain steady, heading the same way all this time?

Ans. She could not help it.

Ques. Why?

Ans. Because she was hung by the other vessel.

Ques. What is a fly?

Ans. It is what every vessel has.

Ques. How was it blowing?

Ans. A little before the beam on the weather side; the fly only tails one way.

(Adjourned to Feb'y 25, 1865, at 9 a. m., when the parties appeared—Mr. E. Cary for the libellants, and Mr. Van Dyke for the respondents—and the cross-examination of the witness was continued.)

The crew of the Grey Eagle was five men before the mast, two mates, the captain, and the cook; all were aboard at the time of the collision.

Ques. Where was your vessel at the time you came about on the second tack, and how did Sheboygan light bear from your vessel?

Ans. It was to the eastward and southward of the light at the time she came about; as to the bearing of the light I don't know.

Ques. Did you notice from the deck of your vessel the direction in which the Sheboygan light appeared from it? How did it look from your vessel at the time when you came about and the Grey
155 Eagle was steadied on her course?

Ans. I did notice it; as near as I can guess, it looked three or four points on the weather bow, but I took no bearings.

Ques. This was at the time when the vessel was steadied on her course, was it?

Ans. This was when we were full and by; this is not a course.

Ques. Whereabouts was the Grey Eagle when you went below, and how did the Sheboygan light bear or look from your vessel when you went below?

Ans. I didn't take any bearings; the light looked about the forepart of her main rigging?

Ques. How far was the Grey Eagle from the Sheboygan light, as near as you judge, when you went below?

(Mr. Lynde, of counsel for libellants, appeared at this time.)

Ans. I don't know.

Ques. Did the Sheboygan light, at the time you went below, look over your port quarters?

Ans. It was in the forepart of the main rigging, as I said before; this is all the answer I can give.

Ques. Did you notice the light just as you went below?

Ans. No, sir; it was a revolving light, which was the reason I did not see it as I went below.

Ques. Do you remember where you were standing, and what you were doing the last time you saw the Sheboygan light, before you went below?

Ans. I was doing nothing; I was standing the forepart of the fore cabin.

Ques. Now, then, from that point, which way did the light bear or look from your vessel?

Ans. I didn't take any bearings; I can only say, as near as I can guess, it was in the forepart of the main rigging that I saw it flashing up.

Ques. Did you pass the light close aboard?

Ans. We can't pass it close; there is a reef there.

Ques. How far does the reef extend out from the light?

Ans. As far as I can guess—I havn't measured it—threequarters of a mile.

156 Ques. Where were you placed, and what were you doing, when you first noticed the bright light on your lee bow, and how many points did it bear over your lee bow?

Ans. I didn't do nothing. I don't know how many points it bore. I was standing on the lee quarter.

Ques. Was the light, which you noticed over your lee bow, more than one point to the leeward?

Ans. That I don't know.

Ques. Did not the light appear to be nearly dead ahead?

Ans. No, sir; on the lee bow.

Ques. You say that you saw a light ah'd on your whether bow, a bright light; where were you standing when you first noticed that light, and how did it look from your vessel and your place?

Ans. I was walking on the weather side. It looked on the weather bow. The bearings I don't know; didn't take any.

Ques. Did it appear more than one point over your weather bow?

Ans. It was on the weather bow.

Ques. Both of these lights that you saw, the one on the lee and the one on the weather bow, were bright lights, were they not?

Ans. Yes; bright white lights.

Ques. Which one of these lights did you see first?

Ans. The weather one.

Ques. How long after you saw the weather one before you saw the lee one?

Ans. I had no watch in my pocket, and I can't tell.

Ques. What did you do between the time when you saw the light on the weather bow and the light on the lee bow?

Ans. Nothing. I was walking the deck, to warm myself.

Ques. Did you not walk, after you saw the light from the lee quarter, over to the weather side forward, and then discover the light on the weather bow?

Ans. Yes.

Ques. Did you see the light over the weather bow as soon as you reached the weather side of the vessel?

Ans. The look-out sung out the light on the weather bow.

157 I saw it after the look-out sung out, and I walked to the windward.

Ques. When on the lee quarter, who first saw the light over the lee bow?

Ans. The captain did.

Ques. Where was the captain standing?

Ans. On the lee side.

Ques. Forward or aft?

Ans. I could not say. It was dark. I could n't see him. I heard him sing out, "Light on the lee bow."

Ques. At the time you saw the light over the weather bow, where was the captain standing?

Ans. I don't know.

Ques. Was he on deck?

Ans. Yes.

Ques. Where was the first mate?

Ans. I don't know.

Ques. Was he on deck?

Ans. Yes.

Ques. Had any of the crew gone below?

Ans. Yes.

Who?

Ans. The captain's watch.

Ques. Give their names?

Ans. Nicholas and Hans; their surnames I don't remember. They went below as soon as we made the second tack. They were then told to go below.

Ques. How long after you saw those two lights was it before you went below?

Ans. I don't know.

Ques. Did the captain go below before you did?

Ans. Yes; we both went together. He went a little ahead of me, I think.

Ques. At that time, when you and the capt. both went below, had these two lights changed their position with reference to your vessel?

Ans. I don't know.

Ques. At this time, how did the Sheboygan light look from your vessel?

Ans. That I don't know.

Ques. Did you notice it?

Ans. No; it is a flash light, and you can't see it all the time.

158 Ques. How long had you been below—what did you do below—before you heard the mate ordering the vessel to put her helm "hard up, hard up."

(Objected to, because the ques. assumes that the wit. has testified that it was given twice instantaneously, which is not so, a time intervening between the orders.)

Ans. I was below about five or ten minutes. I lighted my pipe, had a smoke; that is all. I was just going to lay down on the soft side of a plank.

Ques. Then all you did or had time to do, when you went below, was to light your pipe, which was already filled, and jump on deck, and the vessels were together?

(Objected to. The assumption of the question is not justified by the evidence.)

Ans. I had to hunt my pipe up first, and I looked for a match, and then lit it, and then threw it down, and jump on deck as quick as I could.

Ques. Now, then, when you came on deck, who was the first man man you saw, and where was he standing?

Ans. The captain; he was on the lee side, about the main hatch.

Ques. Was he walking towards you?

Ans. He was walking forward.

Ques. Where was the bowsprit or jib-boon of the Grey Eagle when you noticed it over the deck of the Perseverance?

Ans. It was foul of the toppen lift, in the reach of the mainsail.

Ques. Did the bowsprit point towards the stem or bow the Perseverance?

Ans. She was sunk, and I could not see her, unless the mast—

Ques. Did you go forward and assist in getting her clear from the Perseverance?

Ans. Yes; I went forward and took aboard the female cook who stood there in her shift.

Ques. What was the color of the cook?

(Objected to, because the libellants' counsel have no right to question their Kanuck Frenchman's taste as to color.)

Ans. Dark complexion.

159 Ques. You say that the Grey Eagle was a first-rate steering vessel; she had a fair wind at the time of this collision; could you change her course, in running a distance of one hundred

and fifty or two hundred feet in that channel on that night, twenty-five or thirty feet either way?

Ans. There is something in there I can't answer. The Grey Eagle had not a fair wind.

Ques. Well, with that wind, could you?

Ans. Yes, sir; with the wheel put right; with one put starboard and the other port, then we couldn't.

Ques. If the look-out ordered the man at the wheel of the Grey Eagle to put the wheel "hard down," and if the mate, in repeating the order, ordered the man at the wheel to put it "hard up," do you think, that if the wheelsman undertook to obey both orders, that the vessel, in running one hundred and fifty or two hundred feet, could change her course twenty-five or thirty feet to the southward on that night, on board of your vessel?

(Objected to, because it implies an assumption of fact not in evidence but in direct contradiction to it.)

Ans. The business of the look-out is to sing out, but he has no right to give orders. The man at the wheel puts it as the mate or master orders him, and keeps it there till he is called to steady it. He don't obey no orders from a man before the mast. That is all.

Ques. Ans. the balance of the ques., assuming the wheelsman to obey orders.

Ans. If the wheelsman was a seamen, he wouldn't try to do it; so there is no use, by G'd, to answer such a question.

Ques. How long after the wheel is put hard up on the Grey Eagle, on that night, and in that channel, and on the course that she was steering, after you passed Sheboygan light, would the Grey Eagle feel her helm?

160 Ans. She was on no course; she was full and by, and couldn't go no higher.

Ques. She could come in stays, couldn't she?

Ans. Yes.

Ques. How soon, after the wheel is put hard up on that night, would the Grey Eagle feel her wheel?

Ans. As soon as the wheel is up, she pays off.

Ques. Does she come up, or would she come up, as quick as she would pay off?

Ans. That depends upon what sail in on her.

Ques. I am speaking only of the Gray Eagle as she was that night; would she then come up as quick as she would pay off?

Ans. Yes.

Ques. That night, you say, you heard noise and halloaing before you came up out of the cabin, at the time of the collision; state what you heard, and whose voice or voice you heard.

Ans. "Hard up," twice. I couldn't tell for sure whose voice; I expect the mate's.

Ques. Any other noise?

Ans. No.

Ques. What was there in the voice of the mate that alarmed you and made you jump on deck?

Ans. I can't give you an answer before you explain this. You ask me how I knew the mate sang out. I know there is no other one sings out but the mate. It is the mate's business.

Ques. Did you hear the wheelsman make any reply?

Ans. Yes.

Ques. Did you hear the look-out when halloaed "hard down?"

Ans. No.

Ques. Did you hear any running on the deck?

Ans. No, sir; I couldn't hear it in the cabin. I couldn't hear it.

Ques. Where was the mate when you came on deck?

Ans. I don't know.

Re-direct:

Ques. You say the captain sung out, "Light on the lee bow;" what else did he say about that light at that time?

(Objected to.)

161 Ans. He said he supposed it to be a propeller.

Ques. Going up or down?

Ans. That I don't know. He didn't say.

Ques. About how far off was the light on the lee bow from you?

Ans. I should guess about a mile. It was a dark night, and a light don't show so far.

Ques. About how far off was the light you saw on the weather bow?

Ans. I couldn't tell. I didn't take particular notice.

Ques. What did you take the last light to be?

Ans. I expected it was ashore, or a vessel lying at anchor.

Ques. You state you heard the mate cry out, "Hard up," twice before you came on deck, immediately before the collision; how long was it after you heard the first cry, "Hard up" before you heard the second?

Ans. Not over three minutes.

Ques. You state you heard the wheelsman reply to the mate's order, "Hard up;" what was the reply?

Ans. "Hard up."

Ques. When the officer in command of the deck gives the order to the wheelsman, what is the usage or rule in reference to the wheelsman replying, and what does he reply?

Ans. He replies the same as the officer sings out.

Ques. You say that the woman cook of the Perseverance was dark complexioned; what was the complexion of Capt. Deott, and which was the darkest complexioned, Capt. Deott or the female cook?

Ans. I don't expect that there was any difference in them as far as I could notice.

Ques. Do you know whether she was French, too?

Ans. No, I don't.

Ques. You were asked the ques. whether the Grey Eagle would come up that night as quick as she would pay off. You answered, Yes, sir. You further state that, at the time, she was full and by;

now, if she was full and by, how much could she come up without coming into stays?

162 Ans. She could come up a point, supposing a man forward should stand by and haul the staysail to the windward.

Ques. How much would she pay off? How many points?

Ans. She would pay off right before the wind.

Ques. What kind of seamanship would it have been, with the Grey Eagle full and by, to have attempted to pass the Perseverance on her starboard?

Ans. No seamanship at all. If a man knows anything, he keeps his side.

Ques. How many points had the Grey Eagle free, coming up the straits, after she had passed the Sheboygan light, and got on her course?

Ans. None; she was full and by.

Ques. How many points free had the Perseverance on her course in coming down the straits east by south?

(Objected to as not cross-exam'n.)

Ans. About four or five points by our compass, and the way we had the wind.

Re-cross-examination:

Ques. You say, in your direct examination, that your vessel, the Grey Eagle, was running a course full and by, and with a view of giving her a berth with reference to the shore; will you state which shore, the north or south?

(Objected to, because the question is uncertain as to place; and further, that the statement is in the cross-examination and not in that in chief.)

Ans. The south at the time we went about, but at the time of the collision we were about the centre.

Re-direct:

Ques. State in how many localities you had to give the shore a berth in making the straits, and what position, as to the centre of channel, you took after entering the straits and passing Sheboygan light?

163 Ans. We couldn't enter without tacking. To enter, we first ran up to Bois Blanc island and tacked ship, and stood over to the south shore; and then tacked ship again and went up the straits. After entering the straits and passing the Sheboygan light, we steered full and by; had nothing to spare.

Ques. How near were you to the centre in going up the straits?

Ans. If any, we were a little to the south of the centre of the channel in passing the Sheboygan reef.

Ques. How far east, or about how far east, of the Sheboygan light did you make your second tack?

Ans. I couldn't tell.

Ques. Was it to the east or west of the Sheboygan light that you made the tack?

Ans. The east.

(On the testimony being read over to the witness, the respondents' counsel asked the following:)

Ques. On the 41st page of your deposition, folio 166, it is recorded as follows: "Ques. How was it blowing?—Ans. A little before the beam on the weather side; the fly only tails one way?" Will you explain your answer, and tell me which way the fly tailed, aft or forward, and which side of your vessel?

Ans. It tailed a little before the beam a point and half. I mean that was the direction from which the wind came making the fly tail in just the opposite direction.

Re-cross-exam'n:

Ques. When you came up out of the forecastle, and looked up at the top of the mainmast, at the mainmast head, and saw the fly, does the diagram here shown you, to be attached to your deposition, marked Exhibit A, show the direction in which the tail of the fly appeared to you, and was this diagram made at your request and under your direction?

(Objected to, because it double and complex.)

Ans. The fly was a little afore the beam, a point and a half. I made the mark on this paper shown me, across the vessel,
164 showing the direction the fly pointed or tailed.

Re-direct:

Will you now draw on the same diagram the fly as it would have been before the vessel paid off a point or a point and a half, under the order "hard up," just before the collision?

The witness answers: I will, (and draws a line with a red lead pencil and says:) The mark I make is not proper the way it blows from the mast-head, because I can't do it.

Que. Is either line, as drawn on that peice of paper, proper, as it shows from the mast-head?

Ans. No.

Ques. Are they as near right as you can draw them?

Ans. Yes.

Ques. When you saw the fly, after the collision, did it tail before or abaft the beam?

Ans. Abaft the beam.

CARL SMITH.

Subscribed and sworn to before me, February 25, 1865.

FRANCIS BLOODGOOD,
U. S. Circuit C't Com'r.

JOHN G. BECKLEY, called and sworn on behalf of the respondents, deposes and says:

My name is John G. Beckley; my age, forty-seven; my residence, Milwaukee; my occupation, a seaman; I have been one for thirty-two years. I have sailed before the mast; I have sailed as first and sec-

ond mate and master. I have been mate and master for the last twenty years. Have not sailed before the mast for twenty years. When I first commenced sailing, I was on the salt water for seven years. On the 24th Nov., 1864, I was on board of the Grey Eagle, as master, from twelve at night to four o'clock in the morning of the 24th Nov., 1864. It was the mate's watch. I was on deck during the mate's watch. The vessel, I think, was about the foot of the Bois Blanc about one o'clock that morning. Her course, be-
165 fore we got to the foot of Bois Blanc island, before we took any tacks, was as follows: We were heading some of the time west by north, and then some of the time she was heading some of the time west by north half north; and one time in particular, as I looked, she was up west half north, as the wind was baffling somewhat. We kept her by the wind as high as she would go, with a good full.

Ques. How was the wind during this time?

Ans. About south-southwest.

Ques. What did you do when you got to the foot of Bois Blanc island?

Ans. We tacked ship, sir.

Ques. Why did you?

Ans. We couldn't sail into the south passage without doing so.

Ques. Why couldn't you?

Ans. Because the wind was nearly out of the straits from the point we were then.

Ques. What course was that from where you were before you took the first tack?

Ans. We would have had to have steered as far as west-southwest to get clear of the island, which the wind would not allow us to do.

Ques. Which way did you run after you took your first tack?

Ans. We were heading southeast half south, standing over for the south shore.

Ques. Did you then tack again?

Ans. Yes.

Ques. When you took this second tack, when you came about on it, how far were you off from the Sheboygan light?

Ans. About three miles, as near as I can calculate, as dark as it was that night.

Ques. What did you do after you came about on the second tack?

Ans. Came about by the wind.

Ques. In about what direction and to do what?

Ans. She was then heading west half north; the canvass was a lifting, and I told the man to keep her a full, and when I
166 looked again she was heading west by north.

Ques. How did the Sheboygan light at this time bear upon your vessel?

Ans. It looked to be about three points on our weather bow; we had not passed it. This was about the time the canvass lifted.

Ques. What was your course at the time you passed the Sheboygan light?

Ans. West by north.

Ques. How far was your vessel at the time she passed the Sheboygan light as to the centre of the channel?

Ans. We were to the southward of the centre of the channel.

Ques. How much to the southward?

Ans. I should judge, from the way the light looked, we were not more than a mile to the north of the Sheboygan light when we passed it.

Ques. How were you, as to the centre of the channel, after you got a half a mile beyond the Sheboygan light on that same course?

Ans. We would be about in the centre of the channel; probably a little to the southward; nearly in the centre.

Ques. How long did you remain on deck after the Grey Eagle passed the Sheboygan light, before going below?

Ans. About twenty minutes, or it may have been an half an hour; I could not say to five or ten minutes.

Ques. What was the course of your vessel when you went below, after passing the Sheboygan lights?

Ans. West by north.

Ques. How was the wind?

Ans. About south-southwest.

Ques. How was your vessel as to the wind; I mean, how close on?

Ans. She was by the wind.

Ques. Did you see any lights before you went below, after you passed Sheboygan lights, and what?

Ans. I saw a light on the lee bow and one on the weather bow.

Ques. What light did you see on the lee bow?

Ans. A propeller's light.

167 Ques. Bound up or down?

Ans. Bound up, sir. There was one passed a little while previous to our passing Sheboygan light.

Ques. What light did she show?

Ans. A bright light.

Ques. Why did you take it for a propeller's light?

Ans. There was a propeller passed us before we passed the Sheboygan light, and you can see a propeller's light a great way.

Ques. How did that light bear from your vessel?

Ans. It was from a half point to a point on the lee bow.

Ques. How distant from you?

Ans. I should judge from three to four miles to the westward of us.

Ques. Where were you standing when you saw that light?

Ans. On the lee quarter.

Ques. What was the light you saw on the weather side, and how did it bear on your vessel, and what did you take it for?

Ans. A point and a half on the weather bow; and I took it to be a vessel lying at anchor, it being a bright light.

Ques. How far distant was it from you?

Ans. About two miles or thereabouts, I should judge, when I went below.

Ques. Did you see any other light than these two?

Ans. None beside the Sheboygan light.

Ques. Did you see anything of the schooner Perseverance that night?

Ans. No; not at that time.

Ques. What did you do after you went below?

Ans. I pulled off my cap and threw it on the table, pulled off my mits, laid them by the stove to dry, unbuttoned my overcoat, took a fresh chew of tobacco, and sat beside the stove to warm me; took my comforter off my neck; and I believe I looked over the chart a few minutes; I had it lying on the table, spread out.

Ques. How long had you been on deck, without being be-
168 low, before you went below that time?

Ans. I went on deck at eight o'clock; at about (10) ten o'clock went below for a few moments to examine the chart, or for some other purpose; went back on deck again and took in the gaff top-sails, and continued on deck till about fifteen or twenty minutes past two by our time, as I have stated.

Ques. At what time did the mate's watch commence?

Ans. At twelve o'clock.

Ques. Why did you continue on deck up to that time during his watch?

Ans. I thought it was my privilege. It had been snowing in the forepart of the night, and I did not know but it might shut in thick again, and I wanted to know where the vessel was when it shut in.

Ques. How long had you been below. at the time you went below after passing the Sheboygan light, before coming on deck again, and what brought you on deck again during the mate's watch?

Ans. It might have been ten minutes and it might have been twenty minutes, as time goes away pretty fast when a man is sitting by a warm stove, especially when he is very cold. I heard a noise on deck, and thought there was something wrong, and went up to see what it was.

Ques. What noise did you hear?

Ans. I heard the mate singing out, "Hard up," "Hard up," several times; there was some other halloaing, but I couldn't tell what it was.

Ques. Where was the other halloaing?

Ans. Forward, but I couldn't tell whether it was aboard of us or where it was.

Ques. Did you come on deck?

Ans. Yes.

Ques. State what took place after you started to come on deck?

Ans. When I got on deck, I saw a schooner across the Grey
169 Eagle's bow. It was not more than an instant before the Grey Eagle struck the schooner.

Ques. Where were you standing when the Grey Eagle struck her?

Ans. Between the mainmast and the cabin, about three or four steps from the cabin, going forward.

Ques. Where did the Grey Eagle strike the Perseverance?

Ans. On the forward part of her cabin on the starboard side, about twenty-five or thirty feet from her stern.

Ques. How was the Perseverance heading at the time she was struck?

Ans. She looked as if she was heading across the channel, her head to the northward. I don't know how she was heading according to the compass.

Ques. How was the Grey Eagle heading at the time?

Ans. At the time she struck her, according to the best of my knowledge, she was heading about northwest by west.

Ques. How do you know that your vessel was heading northwest by west at the time you struck the Perseverance?

Ans. I saw Sheboygan light, and that was right over our stern, and it bore southeast by east.

Ques. How was the wind at this time?

Ans. About south-southwest, or thereabouts.

Ques. What do you mean by thereabouts?

Ans. It might have been a trifle to the westward or a trifle to the southward; I couldn't say within an eighth of a point.

Ques. If the Perseverance was running her course east by south, and your vessel, at the time of the collision, was heading northwest by west, how could the Perseverance be struck on her starboard quarter; or how happened it that she was struck on her starboard quarter?

Ans. The Perseverance must have put her helm hard astarboard.

Ques. If she did put her helm hard astarboard, where would that bring her?

Ans. With her head to the northward, and our helm being hard aport, that would bring our head to the northward likewise.

170 Ques. Before your helm was ported, what was your course just before the collision?

(Question waived.)

Ques. If the course, when you went below, was west by north, and the mate kept her off a point, before the helm was put aport, just preceding the collision, what would her course be?

Ans. West-northwest.

Ques. Did you give any orders as to her course just before you went down?

Ans. I did; I told the mate to keep her off three quarters of a point or a point, just as he saw fit, after we got along a little farther.

Ques. Now, capt., if your vessel was running west-northwest before your helm was put hard up, and the course of the Perseverance was east by south, and the Perseverance had not starboarded her helm, could there have been a collision?

Ans. There could not.

Ques. Why?

Ans. The Perseverance would have passed us on our port side if she had kept on her course.

Ques. With the course of the Grey Eagle before the collision west-northwest, and the Perseverance east by south, if the Perseverance

had ported her helm when the Grey Eagle did, would there have been a collision?

Ans. There would not, because one vessel would have swung one way and one the other, with a wide berth.

Ques. Before the Grey Eagle was put off a point and was running west by north up the straits, and the Perseverance down the straits east by south, how far from dead ahead were they, or rather how were they approaching each other?

Ans. If they were in line, they would be coming right opposite each other precisely.

Ques. With the respective vessels on their respective courses named, and both in or near the centre of the channel of the straits, how far from dead ahead would they be approaching each
171 other before your vessel was put off a point, they being a mile apart?

Ans. If they were near in the centre of the channel, and both vessels steering the opposite courses to each other, they would pass very near each other.

Ques. In the approach of these two vessels, what had the Perseverance to apprize her of your course and position?

Ans. We had two splendid lights to show her the course we were coming.

Ques. What lights were they, and how placed?

Ans. A green light, placed on the starboard rail, about eight feet forward of the forerigging; and a red light on the port rail in the same position; both of them were placed above the rail about two feet, with iron fastenings and the proper screws.

Ques. Could any sea wash away those lights?

Ans. No, sir.

Ques. How far would those lights be visible on a night like that?

Ans. Between four and five miles. The night was dark, but it didn't snow at the time, (the atmosphere was clear,) and so dark that you might run against a man on deck without seeing him. It didn't snow after we passed Sheboygan light.

Adjourned till February 27, 1865, at 9 a. m., when the parties appeared, as follows: Mr. Cary for the libellant and Mr. Van Dyke for the respondents; and the examination of the capt. was continued.

Ques. With the Perseverance approaching your vessel, showing a white light before she got near enough to show the lay of her sails, what would there be about her to show you her course, the bearing on your vessel, or the fact that she was in motion at all?

Ans. There would be nothing. Shortly after the collision we passed another vessel showing a white light, which I, at the time we approached her, took to be a vessel at anchor. Capt. Deott and his mate, who stood by me on the deck, said, "No; she is in motion,
172 showing a white light, as we were." I says, "I believe she is lying at anchor, but I am not sure;" and sung out to the wheelsman to keep her off, and he kept her off about a point, and we gave her a berth, and she proved to be a vessel at anchor.

(All that part of the answer which relates to the conversation between this witness and Capt. Deott objected to in due time, because not a part of the res gesta; and there has been no foundation laid for the evidence; and it is calling for the statements of the third person.)

Ques. How far, on that night, could you distinguish the lay of the sails of a vessel without any light but a white light?

Ans. Not over two or three vessels' lengths.

Ques. What ought the Perseverance to have done if she had nothing to show during the night but a white light?

Ans. I don't hardly know how I should answer that; she should have either come to anchor or kept out of the way of everything she met.

Ques. If the Perseverance had exhibited a torchlight, how far off could you have determined her course from the lay of her sails?

Ans. Probably about a fourth of a mile, far enough so that we could have kept clear of her.

Ques. Would there have been any difficulty in the Perseverance procuring a torchlight at the Manitous, or from any other vessel?

Ans. That I couldn't say, as she could procure torchlights at the Manitous or from other vessels, as each vessel has their own provided for them before they leave port.

Ques. Have you stated the course of the vessel at the time you came on deck, just at the time of the collision, when you came on deck? If not, do so.

Ans. I have not stated it before, just at the time of the col-
173 lision; I couldn't state it, for I didn't take any notice of it; but five or eight minutes afterwards I went aft and I looked at the compass, and I saw that the wind was about the same as it had been, about south-southwest or thereabouts.

Ques. How long did the wind continue in that course without change?

Ans. It continued until that afternoon between one and two o'clock, and then it hauled more to the westwards.

Ques. If the Perseverance showed a white light, what course might she have been going and still show the white light; that is, in how many directions could she have been going, and you only see a white light on her?

Ans. She might have been going up the straits, or she might have been going across the straits, either to the northward or to the southward, and she would have to be past us two points from being dead ahead; then we would not be able to see her proper lights, red and green, in that position; still we might have seen her lights shining from her cabin windows, which would be a white light. It is very often we see a white light from vessels' cabins if they are ahead of us, going the same way, or off on either side.

Ques. How far west or northwest from the Sheboygan light did the collision take place?

Ans. From a mile and a half to two miles; it might have been a trifle more—I can't say.

Ques. How, as to the centre of the channel?

Ans. Near the middle; it may have been a little to the southward.

Ques. How far from the point of collision to old Fort Mackinac, about how far?

Ans. I should say about ten miles, or thereabouts.

Ques. If the Perseverance came down the straits on the usual course of vessels, and, after passing old Fort Mackinac, laid her course east by south, how far from the centre of the channel would she be running between Fort Mackinac and Sheboygan light?

174 Ans. It looks to me that she would not clear Bois Blanc island with that course; but if he hauled around the point, and got the south shore close aboard, then he could steer that course; but how far he could steer that course and keep clear of the land, I don't know.

Ques. Could the Perseverance run through the straits, from old Fort Mackinac to Sheboygan light, on an east by south course, without keeping near the centre of the channel; I mean, make the whole run?

Ans. That course would lead her to the northward of the centre of the channel.

Ques. Heading how?

Ans. East by south; because she would be steering a point and one-fourth to the northward of the due course.

Ques. Could the Perseverance, in running that course, east by south, down the straits, and coming in collision with the Grey Eagle about a mile and a half or two miles west of Sheboygan light, and south of the centre of the channel—could she, at any time before the collision, have been north of the centre of the channel on that course?

Ans. I should think she would have been considerable to the north of it. He never could have steered that course without coming in contact with Bois Blanc island.

Ques. (The question was again read witness, and he—)

Answers. His course would have led him north of the centre if it had been continued long enough; but up to the time he struck us he could not have reached a point north of the centre, because we were south of the centre.

Ques. If, when he laid his course east by south after coming around old Fort Mackinac, he was north of the centre of the channel when he took his course, how far could he have got down the straits on that course before striking the north shore, and could he have got down as far as the place of collision?

175 Ans. He could not have got as far as the point of collision. He could have only got to the Zelah shoals.

Ques. If, just previous to the time of collision, the Perseverance was steering east by south before she starboarded her helm, and had been running that course from the time she passed old Fort Mackinac, what must have been her position all the way down as to the centre of the channel?

Ans. She couldn't have got down at all, because on that course she would have run ashore on Bois Blanc island.

Ques. Capt., look at the map and see whether she couldn't have gone down on that course. (Witness looks.)

Ans. If she had hauled up close in to the south shore before taking that course, she might have got down.

Ques. How would that place her as to the centre of the channel? It would place him south of the centre, would it not?

Ans. I should think it would.

Ques. If the Perseverance, after passing Fort Mackinac, did take a tack to the south shore, and then lay her course east by south through the straits, and run that course, would he, at any time up to the time he starboarded his helm just before the collision, be to the leeward of your vessel?

Ans. No, I think not.

Ques. Could he possibly be, keeping on that course?

Ans. No, he could not.

Ques. Capt., look at the map here, which is the gov't survey of the Straits of Mackinac. The collision between the two vessels taking place south of the centre of the channel, and about two miles westward of Sheboygan light, the Perseverance running down the straits to that point on a course east by south, could she by any possibility have seen the Sheboygan light to the leeward of the Grey Eagle?

Ans. No, she could not.

Ques. Why not?

Ans. Because the Perseverance would be too far to the southward.

176 Ques. How far north of the Sheboygan light did you enter the straits?

Ans. We passed Sheboygan light about mile to the northward.

Ques. If you passed the Sheboygan light a mile to the northward of it, on the course west by north you have stated, till the time you went below, and your vessel was then kept off west-northwest up to the time of the order "hard up," just before the collision, and the Perseverance, after tacking and laying her course east by south, ran that course down to the time she starboarded her helm, just before the collision, could she, at any time, be to the leeward of you?

Ans. She could not.

Ques. Why not?

Ans. Because the land runs about the course she was steering, and she is supposed to be close under the land.

Ques. Could she run otherwise than close under the land there, and keep the course east by south from the time she tacked, after passing old Fort Mackinac, down to the point of collision?

Ans. No.

Ques. Now, how would the courses of the two vessels place them—east by south for the Perseverance, and west by north and west-northwest, as stated, for the Grey Eagle? how would these courses keep the respective vessels, and which would be to the windward

and which to the leeward, as they were on these courses in the straits that night?

Ans. The Gray Eagle would be dropping to the leeward all the time, to the leeward of the schooner Perseverance.

Ques. The question is, how would those courses place them?

Ans. The Grey Eagle would be to the leeward of the Perseverance.

Ques. If the Perseverance had been to the leeward of you, and on the course east by south, and you on the course you have named, how did she get under your bows?

Ans. She couldn't get under our bow if she was to the leeward; not in the position she was in.

Ques. What position was she in, and why couldn't she get under you bow in the position she was in?

177 Ans. She couldn't get right across the channel with her head to the northward and her starboard side towards us, if she had been to the leeward of us.

Ques. I want to know what was there, in her position under your bow there, which would have made it impossible for her to get in that position, if she had been to the leeward?

Ans. She couldn't have got in that position in any way in the world if she had been to the leeward.

Ques. Why?

Ans. Because we would have passed her before we would have had time to swing off.

Ques. Would you have fallen off as fast as she would have moved off after she, the Perseverance, starboarded her helm?

Ans. I don't hardly think we would.

Ques. If she was to the windward of you and starboarded her helm, how would it bring her?

Ans. It would bring her right across our bow.

Ques. If you were dead ahead, or nearly dead ahead, and you put your helm up just before the collision, and she starboarded her helm, where would it bring her?

Ans. It would bring her right where it did, right across our bow.

Ques. What could the Grey Eagle have done to prevent a collision after the Perseverance starboarded her helm which she, the Grey Eagle, did not do?

(Objected to, unless he answers as an expert, because the witness was not on the deck at the time, and don't know what was done nor how the vessels approached each other.)

Ans. She couldn't do anything more than what she did do.

Ques. Were the orders of the mate, just before the collision, "hard up," proper or improper orders?

(Objected to, because there is no foundation laid for the question as an expert, and the witness does not know the circumstances under which the order was given, and therefore cannot judge; and question is leading.)

Ans. Yes.

178 Ques. Why was the order proper?
(Objected to as leading.)

Ans. Because I have told my mate, whenever he met a vessel end on or nearly end on, always to put his helm aport.

(Answer objected to as stating conversation with, or statements made to, a third person.)

Ques. Why did you so tell him?

Ans. Because it is according to the rules and regulations of navigation to so work the vessel under such circumstances.

Ques. Was it proper or improper for the Perseverance, on meeting the Grey Eagle on the course named, to starboard her helm?

Ans. It was improper.

(The last question was in due time objected to as leading, and because no ground is laid for it.)

Ques. Why was it an improper order?

(Objected to as leading, and because no ground is laid for it.)

Ans. Because it is ruleable for vessels meeting in that way, or in any other way, even crossing each other's bows, to both port their helm. It has been the rule ever since I went to sea, and that is thirty-two years ago.

Ques. Which vessel had the freest wind that night, the Perseverance or the Grey Eagle?

Ans. The Perseverance; she must have had it two or three points freer than we had it.

Ques. Which vessel was carrying the most sail?

Ans. The Grey Eagle.

Ques. How much the most?

Ans. The Perseverance had single reefs in, and we had no reefs in at all; and we were carrying a jib topsail, and they were not.

Ques. How fast was the Grey Eagle sailing?

Ans. Four or five miles an hour.

Ques. If the Grey Eagle was making but four or five miles an hour with the sails she was carrying, and the Perseverance was
179 making six miles an hour with the sails she was carrying, how much freer must she have had the wind than you?

Ans. I don't know; she must have had it a great deal freer, or she could have made no such speed as that.

Ques. What do you mean by a good deal freer?

Ans. Two or three points, perhaps four; I couldn't say.

Ques. By whom were the signal lights on the Grey Eagle put up?

Ans. I got the screens made by Wade & Green, of Milwaukee, carpenters and joiners, and the stanchions were made by Monroe, a blacksmith, Milwaukee, and I bored the holes and shipped them myself. All that was required was the holes to place them.

Ques. How solid were they put up?

Ans. So solid that a sea could not wash them away if the vessel should put them under every five minutes. They have been put under several times, and never been affected at all.

Ques. Do you know the manner in which the signal lights were put up and placed on the Perseverance?

Ans. I do not; I know nothing about that.

Ques. Did you hear the evidence of the second mate of the Perseverance, and others of the crew, in regard to the locality and manner of putting up the signal lights of the Perseverance?

Ans. I did.

Ques. Will you state, in regard to the signal lights of the Perseverance, from the manner in which they were placed, as testified to by these witnesses, whether they were properly and securely placed; and if not, wherein they were not?

Ans. I heard two of the witnesses testify that they were placed on the poll bit, and that they had themselves made the screens and placed the there; the poll bit was not the proper place for the lights; they should have put on the side somewhere, forward of the fore rigging; they should have been well secured, so that the
180 sea could not have washed them away.

Ques. If they had been put up in their proper place and properly secured, could they have been washed away by the sea; and if not, why not?

Ans. They could not if they had had proper fastening to have held them there.

Ques. After the collision, did you hear the officer of the Perseverance, or any of them, say anything about the reason of the collision; and if yea, what was said, who said it, and how soon after the collision was it said?

(Objected to, because, first, it is not a part of the res gesta and it is immaterial; second, because the officers of the Perseverance have not been asked the question, so as to lay the foundation of this question to the witness.)

Ans. The mate of the Perseverance came up to me on deck soon after the collision; I couldn't say how long after; says he, "That is the fault of us not having the proper lights." He said, "I was afraid something of this kind would occur before we would get through the straits."

(The answer and question objected to, because it is calling for the statements of a party not in interest or a party to the suit.)

Ques. What do you mean by the use of the word us; to which vessel did the mate refer?

Ans. To the Perseverance.

Ques. Do you know where the mate of the Perseverance resides or is to be found?

Ans. He told me his parents lived somewhere near Cleveland, and that he calculated to go there and winter with them. But just in what direction from or how near Cleveland, I don't remember. I have known him by sight for fifteen years.

Cross-examination:

Ques. State the names, places of residence, and the number of your crew.

181 Ans. I had five men before the mast, two mates, and one man that was a cook. Their names and residence are as fol-

lows: John Johnson, first mate, resides in city of Milwaukee. Charles Smith, second mate, resides in town of Lake, Milwaukee county. Seamen: Nicholas McIntyre, Hugh Leech, and Hector McKay, who all reside back of or near Sarnia, Canada. I. F. Bennett; he resides in Detroit, Mich. Hanson Anderson, I believe, is stopping at Watertown, Wisconsin, as near as I can. The cook's name is Richard Easterling. He lives somewhere near Fond du Lac, I believe.

Ques. When did you become the master of the Grey Eagle?

Ans. On the 26th day of August last.

Ques. What other noise did you hear that brought you on deck besides the cry of the mate "hard a port" or "hard up," and how long had you heard any of this noise before you heard the order of the mate?

Ans. I didn't hear any other noise except the mate singing "hard up" until I did come on the deck.

Ques. Was the Grey Eagle a good steering vessel?

Ans. Yes, about as good as the generality of vessels.

Ques. How close to the wind could you run her with a wind like that on this night, and such a wind as you (the vessel) had, when you were running between Sheboygan light, and up to the time you went below.

Ans. She would lay within five points and a half to six points.

Ques. Couldn't you crowd her into five points without staying?

Ans. No, not without staying her.

Ques. How long was your vessel?

Ans. I don't know; I never looked at her papers with reference to that. I suppose, from stem to stern, she is about one hundred and thirty feet long.

Ques. In running that night with that vessel, any time after you left Sheboygan light, and up to the time you went below, could you have changed the course of the vessel fifty feet in running twice her length, by putting the wheel hard up or hard down?

182 Ans. I don't know. I couldn't say whether I could do it or not.

Ques. How much could you change her course in that distance, under those circumstances?

Ans. I might have changed it twenty feet to the leeward. I couldn't run to the windward.

Ques. Wouldn't she come up as quick as she would pay off under those circumstances?

Ans. If I had put the helm a starboard, she would come right around. She couldn't come up any further; not, and keep her under headway.

Ques. How soon, after the helm was put hard up or hard down by the order of the officer of the deck, would it be before she would mind her helm that night, after you left Sheboygan light and up to the time you went below?

Ans. It might be ten or fifteen seconds before she would answer her helm.

Ques. You say that the Grey Eagle, when you went below, was steering by the compass west and by north; that the wind was south-southwest; do you mean to say that your vessel was then running full and by?

Ans. Well she might have been pretty close just at that time.

Ques. How do you mean by close?

Ans. She was rather near to the wind at the time I went below. It was so dark you could not see the canvass lifting much.

Ques. How many points lie between the course you were steering and the wind?

Ans. Not over a point (I guess) to spare. There are seven points mentioned.

Ques. Your vessel, you say, could that night sail within five and a half to six points to the wind, then you would have one point to spare; on the course your vessel was running that night when you went below, and if she paid off; while you were below, one
183 point, under the orders of the mate, she would have two full points, would she not, before she could be put up into the eye of the wind?

Ans. Yes, she would have something to spare, a trifle free, about a point to a point and a half; something like that.

Ques. You say you told your mate, under all circumstances, when meeting vessels dead ahead, or nearly so, to put his helm aport. Now, do you mean to be understood, that if you saw a collision was inevitable by putting the wheel aport, that you would still do so?

Ans. No. I didn't say so. If I thought I could avoid it by putting it astarboard I would do so, though it would be contrary to the rules and regulations.

Ques. You did not mean, then, that your mate should always put his helm aport under all circumstances when meeting a vessel dead ahead, or nearly so?

Ans. I meant that he should put his helm aport when he saw that he could not avoid a collision by putting it astarboard.

Ques. Is there a current down the straits?

Ans. The current follows the wind there. There was not much that night, I think.

Ques. Vessels usually anchor, do they not, near the light?

Ans. Yes, within about a mile and a half from the light. But I have known them to come to anywhere right in the centre of the straits. There is good anchorage anywhere in the straits. I have laid there myself, right in the centre of the straits.

Ques. How far was the Perseverance off from your bows when you came out of the cabin, the first glance you got at her, as near as you can judge, and what did you see first?

Ans. She was off probably about thirty feet, may be not that far. I saw part of her mainsail (just about two-thirds) and the end of her boom across our bow to the windward; didn't see her hull;
184 didn't see her mast even.

Ques. You came out on the weather side of your vessel?

Ans. Yes.

Ques. And walked forward?

Ans. Yes.

Ques. How far did you get forward before the vessels struck?

Ans. I was right opposite the after hatch, a few feet from the cabin doors. I had not got as far as the mainmast, I know.

Ques. Who was the first man you met on your deck on the weather side?

Ans. I don't remember; I think it was the second mate.

Ques. How far—where did you go, I mean, as soon as they did strike?

Ans. I went forward, looked over the bow, and saw the Perseverance was in bad shape, (looked over the lee side.)

Ques. How were they held together?

Ans. The Grey Eagle had her jib-boom through the Perseverance's mainsail abaft her mainmast. The mainsail of the Perseverance was not trimmed according to the wind. After the Perseverance sunk, her gaff was right over our jib-boom.

Ques. What was the way in which these vessels came together? Illustrate it by a diagram, to be attached to your deposition.

Ans. According to the best of my knowledge, a diagram which I produce before the com'r, to be annexed to my deposition, and marked Exhibit B, shows it.

Ques. Did you look at the compass immediately after you looked over the bow, and see what course your vessel was on at the time of the collision?

Ans. I did, as soon as I looked over the bow. I gave an order for them to save the men, and went immediately to the binnacle, and see that her head was northwest by west. I looked over the stern and the Sheboygan light was square over the Grey Eagle's stern.

Re-direct:

Ques. When the vessels got so close, as they were at the
185 time when the order "hard up" was given, if your helm had been starboarded, could you have saved the collision?

(Objected to, because no foundation is laid for this witness to testify as an expert on this point.)

Ans. I don't think we could, judging from the position I found the vessels when I came on deck.

Ques. Would the order, starboard the helm of your vessel, have been a proper order, until the officer in command of your deck saw the position of the approaching vessel?

Ans. It would not.

Ques. What enabled you to see the Perseverance's mainsail, as you have stated, at the time of the collision?

Ans. The reflection of our lights on the sail.

JOHN G. BECKLY.

Subscribed and sworn to before me, 27 Feb'y, 1865.

FRANCIS BLOODGOOD,
U. S. Circuit Ct. Com'r.

JOHN JOHNSON, called by the respondents, being first duly sworn says:

I am twenty-two years of age. I am a seaman. I have been a seaman six years. I have sailed before the mast and as second mate and mate. I reside in Milwaukee. I was a second mate three years. I was first mate a spell last summer and nearly all this summer; all, except that I was second mate of the Grey Eagle going down one trip.

Ques. Where were you on the morning of the 24th Nov'r last, when the Grey Eagle passed the Sheboygan light coming up?

Ans. I was aboard of her. I was first mate. I was on deck.

Ques. How long had you been on deck before she passed the light?

Ans. About two hours. I couldn't tell exactly.

Ques. What was the vessel's course after she got on her course, after she passed the Sheboygan light?

Ans. West-northwest.

Ques. When was she put on that course?

186 Ans. About three quarters of a mile or a mile after we passed the light. She was put on this course immediately after the capt. went below. She was kept on it from twelve to fifteen minutes. Then I ordered the helm "hard up" or "hard aport," because I saw a bright light right ahead under our bow.

Ques. State what you saw that induced you to put the helm "aport," and what you took the light for.

Ans. I saw the light right ahead, not far off. Took it for to be a vessel to an anchor, or a vessel's binnacle, that had hauled up across our bow, standing into the south shore. I was going to pass her stern whether she lay to an anchor or was under way.

Ques. Go on and tell your story.

Ans. There was no way that I could tell what her course was, except that she was lying at anchor, or headed to the south shore, showing a binnacle light astern. The light was not far off, but it was too dark to see the lay of her sails. There was no other way for me to do than to order the helm hard up, and it was the proper way, too. This light was "dead ahead."

Ques. When and how did you first discover that it was a vessel not at anchor showing a white light, and not a vessel headed on the south shore showing a binnacle light "astern?"

Ans. When we were about eighty or one hundred feet close to her, then I saw her poll bit and windlass from a bright light that it was placed on top of the poll bit. As we got close to her I could see her sails, but then that was just in the minute we struck her.

Ques. What did you do when you saw her poll bit?

Ans. There was nothing to do but what I had done.

Ques. What did this vessel do?

Ans. She kept on heading across the straits, as I took it, and that she was heading to.

Ques. How far were you from this light when you first put your helm hard up?

Ans. I couldn't say exactly to that; should think about
187 two or three vessel's length. It might be further. Couldn't tell.

Ques. About how much did your vessel go off under the order "hard aport."

Ans. About one point.

Ques. If the Perseverance had put her helm "aport" instead of starboarding it, how would the vessels have passed?

Ans. They would have separated. We would have swung to the north shore and they to the south shore.

Ques. How would it been if the Perseverance had kept her course east by south, and you had gone off a point, at that distance from each other?

Ans. We would have passed clear by her lee or port side.

Ques. How did he get under you bow?

Ans. He starboarded his helm and got across our bow.

Ques. How do you know he starboarded his helm?

Ans. He came across our bow heading towards the north shore, and the captain of the Perseverance told me, when he stepped aboard the Grey Eagle, that he starboarded his helm to get out of our way.

Ques. What else did he say?

Ans. He said he had lost his lights, and he wanted us, or sung out to us, to put our helm down. I told him I didn't hear that in time to do it.

Ques. Where did you strike the Perseverance?

Ans. On the starboard quarter.

Ques. How much strength has a vessel on the starboard quarter that is eight or nine years old?

Ans. I don't know, but I know that it is the weakest part of a vessel.

Ques. Was there any change of the wind, and if yea, what, from the time the capt. went below up to time of the collision?

Ans. None, to my knowledge.

Ques. What was the course of the wind?

Ans. About south-southwest.

Ques. What further did you hear the officers of the Perse-
188 verance, or any, and which of them, say, if anything, immediately after they got on board your vessel, after the collision? (Objected to, because, 1st, it is calling for the statement of third parties, not parties or in legal interest to the suit; 2d, if it is called to impeach the testimony of any witness, no foundation is laid for it.)

Ans. I heard the mate of the Perseverence, immediately after the collision and immediately after we were clear of the Perseverance, telling the Perseverance's capt. and his second mate, that they could thank their lights for that collision had happened, and he said he was afraid to turn in on his watch below, but he turned in any way and got asleep.

Cross-examination:

Ques. How long have you sailed on the lakes?

Ans. For six seasons.

Ques. What time in the season did you commence, and what was your age?

Ans. I commenced in the middle of the season; my age was sixteen.

Ques. On what vessel?

Ans. The schooner Guido.

Ques. In what capacity?

Ans. I hauled ropes, handled lumber.

Ques. You didn't pretend to be a seaman then?

Ans. No, not an able seaman; I was too young.

Ques. Did you continue all that season on the Guido?

Ans. I was a few trips during that season on the schooner Branch. I commenced sailing on the lakes in 1859.

Ques. You sailed all that season on the Guido and Branch?

Ans. Yes.

Ques. Well, next year, in what capacity and vessel did you sail?

Ans. In the Guido; I don't recollect whether I was in another in that season or not; I was before the mast; I steered my trick; the next season I was on the steamer Barney Eaton, the barque Sunshine, and the Guido, and I continued sailing every year up to and in-
189 cluding last season; in 1863 I sailed in the summer on the lakes, and in the winter on the salt water; I was second mate all the season of 1862 on the Grey Eagle; I was the first mate of the schooner Beach for two trips the summer of 1863; in the summer of 1864 I was first second mate of the barque Turner, and then went on the Grey Eagle as first mate; the time of the collision was my fourth trip as first mate on her; I am a brother of one of the owners of the Grey Eagle.

Ques. Of all these vessels you have sailed on, which ones has your brother an interest in?

Ans. The bargue Tanner, the Guido, and the Grey Eagle, the Barney Eaton, and the Beach; the Sunshine, and the vessels I sailed in on the ocean, are the only ones he was not interested in; I don't know who owned the Sunshine; I sailed on her one or two trips.

Ques. When you first saw the light of the Perseverance, where were you standing on the deck of your vessel?

Ans. On the lee side, amidships.

Ques. Were you near the mainmast or foremast?

Ans. I was walking across there forward of the mainmast, from the windward to the leeward; I was standing at the leeward when I first saw the light.

Ques. How many points, as near as you can judge or recollect, did the light of the Perseverance bear over your bow when you first saw it?

Ans. When I first saw it that time, it was right ahead.

Ques. Did you continue to watch it?

Ans. Yes, I kept my eye on it; I ordered the wheel "hard up" as soon as I saw it.

Ques. Had you been in the cabin, or forward in the forecastle before you saw the light?

Ans. No; just at the time I saw the light the look-o u light ahead."

Ques. What else did he say?

Ans. I heard nothing else; I heard no one beside the look-out sing out, "Light ahead," or say anything else at that time; I didn't hear Bennett say hard down, not so as I could understand.

190 Ques. Did you hear Leech cry out, "Hard down?"

Ans. No, I heard him make a noise, but not that I could make it out.

Ques. If the wheelsman heard Leech cry out "hard down," why didn't you hear it, Leech being on the lee bow, he being forward any way?

(Objected to as immaterial, and that the then position of the actors is not where the evidence places them.)

Ans. That I couldn't tell, but I suppose it is because I spoke that I couldn't hear him; I heard Leech make a noise, but not plain enough to understand; I am not deaf; I am not dull; I was not asleep.

Ques. Why was it you could not hear both Bennett and the look-out cry twice to the man at the wheel, "Hard down?"

A. Because I made a noise myself.

Ques. Did you hear either of them announce to you a light ahead before you saw the light?

Ans. I heard them just as I saw the light.

Ques. Did you hear the man at the wheel reply to you, in reply to your order, "Hard up, it is, sir?"

Ans. The wheelsman said so when I walked aft to see that it was so and sung out the second time.

Ques. You had no difficulty in hearing the wheelsman?

Ans. How could I, when I walked aft to see if he had done it.

Ques. You were on the lee side when you ordered the wheelsman to put his wheel aport, and you were there when he gave you the reply?

Ans. Yes.

Ques. Did you hear anything said from the Perseverance?

Ans. Nothing until after the collision?

Ques. Did you run aft pretty fast when you gave the order?

Ans. I couldn't exactly tell how fast it was, but I run fast till I heard him sing out it was done.

Ques. Were you frightened?

Ans. I was afraid he shouldn't get the wheel hard up quick enough; the look-out sung out the light was right on our bow, and I saw

191 it was there.

Ques. How long before the look-out sung out there was a light on your bow, before you heard him announce the light ahead the first time?

Ans. At the same time, I may say.

Ques. What did you do between the time the look-out first said light ahead and the time when he said the light was right under the bow?

Ans. Told the man at the wheel to put the helm hard up after the first announcement.

Ques. Where were you standing when the vessels came together?

Ans. I was walking forward again.

Ques. You didn't commence to walk forward again until after the vessels struck, did you?

Ans. I did commence to walk forward before they struck.

Ques. Did you run or did you walk fast?

Ans. I walked back to the weather side again.

Ques. Then you were on the lee side when the vessels struck?

Ans. No, I was on the weather side.

Ques. Whereabouts?

Ans. That I couldn't exactly tell, as I was not standing still.

Ques. Were you forward or aft the mainmast?

Ans. Forward.

Ques. Were you between there and the foremast; were you nearer the foremast or mainmast at the time the vessels struck?

Ans. I was not standing still, and can't tell.

Ques. What portion of the Perseverance, how much of her mainsail, did you see at the time the Grey Eagle struck her?

Ans. Most the whole of the mainsail.

Ques. Did you see your capt. standing there?

Ans. No, he was behind me.

Ques. Will you state, did you go forward and see the position the vessels struck each other after the collision, or did you notice how they struck?

Ans. I went forward and saw the position.

192 Ques. Look upon diagram marked Exhibit B, and say if the captain has therein correctly described it.

Witness looks at diagram, and—

Ans. Yes.

Re-direct:

Ques. Did you see a light before the collision that night on your lee bow—a bright light?

Ans. Yes.

Ques. Was that the light that came under the bows of your vessel?

Ans. No; it was a propeller's light that passed us, bound up.

Adjourned to February 28, 1865, 10 a. m., in order to read the deposition over to the witness, and have him subscribe it.

FEB'Y 28, 1865.

Deposition of witness read over to him, and the following questions were put the witness, by the com'r, at the written request of libellants' counsel, Mr. Cary, he not being present. Mr. Van Dyke, who was present, consented to the putting of the questions, subject to such objection as he should make to them when put.

Ques. Will you state the exact place where you stood on the lee side of the Grey Eagle, when you saw the light of the Perseverance, and gave the order to hard up or hard aport?

(Objected to, because the witness has already stated on cross-examination that he did not stand in any exact place. but was walking the deck in that locality forward of the mainmast.)

Ans. I have stated before as near as I can; I was forward of the maimast, not far from the timber-head that is amidships; I was near that timber-head which is fastened to the rail; this timber-head is between the mainmast and foremast, nearer the mainmast; there is one on each side of the vessel fastened to the rail, and I was near the one on the lee side.

193 By Mr. Van Dyke:

Ques. You standing there on the lee side, and seeing the light of the Perseverance from that position "dead ahead," would it not in fact be to the windward of dead ahead of your vessel?

Ans. Yes, sir; as I saw her underneath the jib-boom; under our jib-boom.

The reading of the deposition was finished, and the same was thereupon subscribed by the witness.

JOHN JOHNSON.

Subscribed and sworn to before me, this 28 Feb'y, 1865.

FR. BLOODGOOD,
U. S. Circuit C't Com'r, &c.

Exhibit A.

[For diagram see original, page 193.]

FRANCIS BLOODGOOD,
U. S. Court Com'r, Dist. Wis.

Exhibit B.

[For diagram see original, page 193.]

FRANCIS BLOODGOOD,
U. S. Com'r, Dist. Wis.

194 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Francis ———, a circuit court commissioner, in and for the district of Wisconsin, residing at Milwaukee, Wisconsin, do hereby certify that the foregoing depositions of J. F. Bennett, Hugh Leech, Nicholas McIntyre, on behalf of the claimants; and the foregoing depositions of Hector McKay, Charles Smith, John G. Beckley, and John Johnson, on behalf of the respondents, were taken before me pursuant to stipulation between the parties, and that the body of said depositions, and the captions thereof, shows all the proceedings before me at the taking of the same. That such depositions were reduced to writing as given by the witnesses, and when each deposi-

tion was concluded it was read over to the witness, who made ——— and then subscribed by him in my presence.

Witness my hand and seal this 21st June, 1865.

[SEAL.] FRANCIS BLOODGOOD,
Circuit Court Com'r Dist. of Wis.

And now, at this same term, to wit, April term, 1865, and on the thirtieth day thereof, to wit, on the twenty-sixth day of July, 1865, the following proceedings were had, to wit:

Decree.

JOHN GREENING and CHARLES N. DEOTT
vs.
SCHOONER GREY EAGLE, HER BOATS, tackle, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants. } In admiralty.

195 This day came the parties, by their counsel, and on consideration of the pleadings and proofs, and of the arguments of the respective advocates, it is ordered, adjudged, and decreed by the court that the libel of these libellants be and hereby is dismissed at the cost of the libellants; and, on failure to pay said costs within ten days, that execution be issued against them and Robert P. Fitzgerald, their stipulator for the same.

A. G. MILLER.

And this day came the libellants and filed their prayer for appeal to the United States circuit court for the district of Wisconsin as follows:

District oourt of the United States for the district of Wisconsin.

Prayer for appeal.

JOHN GREENING and CHARLES N. DEOTT and others
vs.
THE SCHOONER GREY EAGLE, HER TACKLE, &c.

The above-named libellants, conceiving themselves aggrieved by the final sentence or decree entered on the day of , in the above-entitled cause, do hereby appeal therefrom to the next circuit court of the United States, to be held in and for the said district, and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the said circuit court.

FINCHES, LYNDE & MILLER,
Proctors for Libellants.

WM. P. LYNDE, *Advocate.*

Order of court.

Whereupon it is ordered by the court that an appeal be and hereby is allowed; and that the libellants file an additional stipulation for costs in the sum of two hundred ond fifty dollars, with surety, within ten days.

196 And afterwards, on August 2, 1865, came said libellants and filed their appeal bond as follows:

Appeal bond.

Know all men by these presents, that we, John Greening, of the city of Cleveland, and State of Ohio; and John O. Niell, George Willey, and John E. Cary, of said city of Cleveland; and William P. Lynde, of the city of Milwaukee, are held and firmly bound unto Guido Pfister and Nicholas Johnson, of said city of Milwaukee, in the sum of two hundred and fifty dollars, to be paid to the said Guido Pfister and Nicholas Johnson, their executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seal and dated this day of July, in the year one thousand eight hundred and sixty-five.

Whereas John Greening and Charles N. Deott have appealed to the circuit court of the United States for the district of Wisconsin, from a decree of the district court of the United States for said district, bearing date the 26th day of July, A. D. 1865, in a cause in which the said John Greening and Charles N. Deott were libellants, and the said Guido Pfister and Nicholas Johnson were claimants, of the schooner Grey Eagle, her boats, tackle, apparel, and furniture, and respondents.

Now, therefore, the condition of this obligation is such that if the above-named appellants, John Greening and Charles N. Deott, shall prosecute their appeal with effect, and pay all such costs and expenses as shall be awarded against them as such appellants therein, then this obligation to be void, otherwise to remain in full force and virtue.

[SEAL.]	JOHN GREENING.
[SEAL.]	JOHN O. NIELL.
[SEAL.]	GEO. WILLEY.
[SEAL.]	JOHN E. CARY.
[SEAL.]	WM. P. LYNDE.

Sealed and delivered in presence of—
HENRY S. WETMORE.
JASPER E. WILLIAMS.
[50 ct. stamp.]

197 *District of Wisconsin, ss:*

William P. Lynde, being duly sworn, deposes and says, that he is resident and freeholder in the State of Wisconsin, and is worth

the sum of five hundred dollars over and above all debts, set-offs and exemptions.

WM. P. LYNDE.

Subscribed and sworn to before me, this 2d day of August, 1865.
F. W. PITKIN,
Notary Public Mil. Co., Wis.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of John Greening et al. vs. the schooner Grey Eagle, &c.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this eleventh day of September, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

J. M. MILLER, *Clerk.*

(Indorsed:) No. 288. Chan. B, page 168. John Greening et al. vs. Schooner Grey Eagle et al. Appeal. Filed Sept. 11, 1865.

198 *Docket entries.*

SEPTEMBER 25, 1865.—This day came the libellants, by their proctor, and filed their motion and affidavit for a continuance, and for leave to take further testimony.

SEPTEMBER 26, 1865.—This day came the parties, by their counsel, and on consideration of the motion for a continuance, &c., it is ordered by the court that this cause be and the same is continued, with leave to both parties to take testimony.

Hearing.

SEPTEMBER 20, 1867.—This day came the parties, by their counsel, Mr. John E. Cary appearing for the libellants and Mr. Van Dyke for the respondents, and this cause came on to be heard before the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit, and the hearing being concluded, the same was held under advisement.

At a stated term of the circuit of the United States of America for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the second Monday (being the ninth day) of September, A. D. 1867.

On the twenty-first day of said term, to wit, on the twenty-fifth day of November, A. D. 1867—present and presiding the Honorable

David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit—the following proceedings were had, to wit:

Decree of reversal and ref. to com'r.

JOHN GREENING *et al.*
vs.
THE SCHOONER GREY EAGLE. } Appeal in admiralty.

199 This cause having been heard on the pleadings and proofs, and due deliberation being had, it is ordered, adjudged, and decreed that the decree of the district court herein, dismissing the libel, be reversed; and this court finds that the schooner Perseverance and the schooner Grey Eagle were both in fault, in causing the collision stated and set forth in the pleadings, and that the damages occasioned thereby ought to be divided; and it is ordered that it be referred to J. M. Miller, a commissioner, to report the amount of such damages, and who have sustained the same, to this court, with all convenient speed, for which purpose, if the commissioner chooses, he may take further proof.

D. DAVIS.

SEPTEMBER 26, 1868.—Stipulation of the parties as to amount of damages sustained by the libellants, filed as follows, to wit:

Circuit court of the United States for the district of Wisconsin.

Stipulation as to damages.

JOHN N. GREENING and CHARLES N. DEOTT, libellants,
vs.
SCHOONER GREY EAGLE, HER BOATS, TACKLE, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants. } In admiralty.

It is hereby stipulated by the respective parties to the above action, that without further proofs than the evidence now on file, and by consent of the parties in said action, the following shall be taken as proved, to wit:

That on the 24th day of November, A. D., 1864, the value of the schooner Perseverance, mentioned in the libel in this action, was the sum of eight thousand five hundred dollars ($8,500.) That the clothing and other property of the crew of the said schooner, lost by the collision on said day, was the sum of twelve hundred dollars, ($1,200.)

That the gross freight money on the cargo of the Perse-
200 verance, had her voyage been completed, would have been the sum of twenty-eight hundred and forty-two 58-100 dollars, ($2,842 58.)

That said schooner's expenses in earning said freight moneys and

completing said voyage would have been sixteen hundred and fifty-nine dollars and twenty cents, ($1,659 20.)

That the nett freight money upon the completion of said voyage would have been eleven hundred and eighty-three dollars and eighteen cents, ($1,183 18.)

That said voyage of the Perseverance would have been completed in the ordinary course, (if no accident or freezing of the waters prevented,) on or about the 6th day of December, 1864.

This stipulation as to said several values stipulated, is made subject to any and all objections as to the allowance of said items, or any of them, as damages in said case.

Dated September 18th, 1868.

EMMONS & VAN DYKE, *Claimants' Proctors.*
WILLEY & CAREY, *Proctors for Libellants.*

And same day (September 26, 1868) came J. M. Miller, esq., the commissioner to whom referance was made, and filed his report as follows:

Circuit court of the United States for the district of Wisconsin.

Report of commissioner.

JOHN GREENING and CHARLES N. DEOTT, libellants,
vs.
SCHOONER GREY EAGLE, HER BOATS, TACKLE, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants.
} In admiralty.

To the judges of the said court:

In pursuance of an order of this court, made in the above cause, on the twenty-fifth day of November, 1867, by which it was referred to me to report the amount of damages occasioned by the collision in the above-entitled cause, and who have sustaind the same.

201 I, John M. Miller, a commissioner of said court, do respectfully certify and report that I have ascertained the amount of the damages occasioned by the collision in said action, and report that the libellants' schooner, Perseverance, lost by said collision, on the 24th day of November, 1864, was on that day of the value of eight thousand five hundred dollars; and the clothing and other property of the master and crew of said schooner, lost by said collision on said day, was of the value of twelve hundred dollars; and that the libellants, by reason of the loss of said schooner and clothing, and other property of the master and crew in said libel mentioned, by the division of the damages as in said order provided, have sustained damages to the amount of four thousand eight hundred and fifty dollars, which sum is the one-half of the value of said schooner and clothing and other property aforesaid.

And I do further certify and report that the gross freight moneys on the cargo of the said schooner Perseverance, if her voyage from

Chicago, in the State of Illinois, to Ogdensburgh, in the State of New York, had been completed, would have been twenty-eight hundred and forty-two 38-100 dollars. That said schooner's expenses and disbursements, in earning said freight money and completing said voyage, would have been sixteen hundred and fifty-nine dollars and twenty cents; that her nett freight money upon the completion of said voyage would have been eleven hundred and eighty-three dollars and eighteen cents; and that I have disallowed the claim for said freight money in the estimate of the damages of the said libellants.

All which is respectfully submitted:

J. M. MILLER,
U. S. Commissioner Wis.

202 SEPTEMBER 28, 1868.—This day came the libellants' by their proctors, and filed exceptions to the master's report as follows:

Circuit court of the United States for the district of Wisconsin.—In admiralty.

Exceptions to report.

JOHN GREENING and CHARLES N. DEOTT, libellants,
vs.
SCHOONER GREY EAGLE, HER BOATS, &c.—Guido Pfister and Nicholas Johnson, claimants.

Exceptions to master's report.

And now, at the September term, A. D. 1868, of the said court, said libellants, by their proctors, Willey & Cary, come and except to the master's report filed in this cause.

First. Because the finding of said master therein, that the libellants, by reason of the loss of said schooner and clothing and other property of the master and crew, in said libel mentioned, have sustained damage to the amount of four thousand eight hundred and fifty dollars, is erroneous, inasmuch as it appears by said report that said sum was the value of one-half of said property on the 24th day of November, 1864, and that interest, or damages in the nature of interest, of said sum, as those exceptors allege and claim, from said date, or from the date when she would have completed her voyage to the date of the decree in this court, should have been added to said sum and included in the damages found by said master.

Second. That said report is erroneous in this, in not including in said ascertainment and finding of damages one-half of $1,183 18, the net freight money specified in said report, with interest thereon from said last-named date to the present term.

Wherefore the exceptors, libellants, pray that these exceptions may be allowed, and that thereupon, and upon the stipulation filed at this term, agreeing upon the value at the time of their loss

of said vessel and other property, and of said net freight money, a decree may be entered in favor of said libellants for such a sum as shall include $4,850, being one-half of said agreed value, and $591 59, being one-half of said net freight and interest on said sum, to wit, on $5,441 59, from November 24, 1864, or from said probable date of arrival, to the date of the decree in this court.

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WILLEY & CARY,
Proctors for Libellants and Exceptors.

And now, at this same term, to wit, September term, 1868, and on the 14th day thereof, to wit, on the 29th day of September, A. D. 1868—present and presiding, the Honorable David Davis, associate justice of the Supreme Court of the United States, assigned to this circuit—the following proceedings were had, to wit:

Exceptions allowed, and final decree.

JOHN GREENING and CHARLES N. DEOTT
v.
SCHOONER GREY EAGLE, HER BOATS, TACKLE, apparel, and furniture—Guido Pfister and Nicholas Johnson, claimants.
} Appeal in admiralty.

This day came the parties, by their counsel, and the exceptions to the report of the commissioner having been argued and considered, it is ordered by the court that the said exceptions be and hereby are allowed.

And the interest on the sum of four thousand eight hundred and fifty dollars, (being one-half of the amount of damages sustained by the libellants according to said master's report,) from the sixth day of December, A. D. 1864, the date of the probable arrival of the schooner Perseverance at her port of destination, being one thousand two hundred and ninety-five dollars and seventy-five cents, and the interest for the same time on five hundred and ninety-one dollars and fifty-nine cents, (being one-half the amount of the nett freight of said schooner on said voyage, according to said report,) being one hundred and fifty-eight dollars and one cent, the whole amounting to six thousand eight hundred and ninety-five dollars and thirty-five cents.

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It is therefore ordered, adjudged, and decreed by the court, that the libellants do have and recover of the stipulators, Guido Pfister and Nicholas Johnson, the said sum of six thousand eight hundred and ninety-five dollars and thirty-five cents, together with two hundred and thirty-five dollars and seventy-three cents, the one-half of the costs of this appeal and of the district court; and, in default of the payment of the same within ten days, an execution be issued against said Guido Pfister and Nicholas Johnson for the same.

D. DAVIS.

And afterwards, to wit, on the 17th day of said term, to wit, on the 5th day of October, A. D. 1868, the following proceedings were had, to wit:

Appeal.

JOHN GREENING and CHARLES N. DEOTT
v.
THE SCHOONER GREY EAGLE, HER BOATS, &c.—Guido Pfister and Nicholas Johnson, claimants. } Appeal in admiralty.

This day came Guido Pfister and Nicholas Johnson, claimants of the schooner Grey Eagle, by their counsel, Mr. Van Dyke, and prayed an appeal to the Supreme Court of the United States from the final decree in this cause, and presented their bond, with Charles J. Meyer and Robert Fitzgerald as sureties, in the penalty of two thousand dollars, conditioned to prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good.

And said bond is as follows:

205

Appeal bond.

Know all men by these presents, that we, Guido Pfister and Nicholas Johnson, of the city and county of Milwaukee, and State of Wisconsin, and Charles J. Meyer and Robert P. Fitzgerald, of the same place, their sureties, are held and firmly bound unto John Greening and Charles N. Deott in the penal sum of two thousand dollars, lawful money of the United States of America, to be paid to the said John Greening and Charles N. Deott, or to their certain attorney, heirs, executors, administrators, and assigns, to which payment, well and truly to be made, we bind ourselves and each of us, our heirs, executors, and administrators, each and every of them firmly by these presents. Sealed with our seals, and dated the third day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

The condition of this obligation is such, that whereas the above-named John Greening and Charles N. Deott, suing for themselves and others, lately obtained a decree in the circuit court of the United States for the district of Wisconsin, against the schooner Grey Eagle, whereof the said Guido Pfister and Nicholas Johnson were and are claimants, and have given their bond in the sum of eight thousand dollars, the value of their said vessel, in order to procure the release thereof from the custody of the marshal under process from the admiralty in said suit, which bond is in the custody and control of the court; and whereas the said Guido Pfister and Nicholas Johnson have appealed to the Supreme Court of the United States to reverse the said decree:

Now, therefore, if the above-named Guido Pfister and Nicholas Johnson shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation

shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] GUIDO PFISTER.
[SEAL.] N. JOHNSON.
206 [SEAL.] CHAS. J. MEYER.
[SEAL.] R. P. FITZGERALD.

Endorsed as follows:

Approval.

I approve of the above bond and the sufficiency of the sureties thereto.

October 5th, 1868.

A. G. MILLER, *Judge.*

Allowance of appeal.

Whereupon it is ordered by the court that said appeal be allowed, and that said bond be approved and citation issued.

UNITED STATES OF AMERICA,
207 *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America, for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of John Greening et al. vs. schooner Grey Eagle, &c.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said district of Wisconsin, this thirteenth day of November, in the year of our Lord, one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

EDWARD KURTZ, *Clerk.*

208 The United States of America, to John Greening and Charles N. Deott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal in the circuit court of the United States of America, for the district of Wisconsin, wherein Guido Pfister and Nicholas Johnson, claimants of the schooner Grey Eagle, her boats, &c., are appellants and you are appellees, to show cause, if any there be, why the decree passed against the said Guido Pfister and Nicholas Johnson should not be reversed, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifth day of October, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third.

[SEAL.] A. G. MILLER, *District Judge.*

We accept service of above citation, this 19th day of November, A. D. 1868.

JOHN GREENING AND CHAS. N. DEOTT,
By WILLEY AND CARY, *Their Proctors.*

Supreme Court of the United States.

GUIDO PFISTER & NICHOLAS JOHNSON,
Claimants of the Schooner Grey Eagle,
Appellants,

vs.

JOHN GREENING & CHARLES N. DEOTT,
Appellees.

BRIEF FOR THE APPELLANTS.

The appellees were owners of the schooner *Perseverance*, and as such libelled the schooner *Grey Eagle* for damages occasioned by a collision, happening between the hours of two and three A. M., of November 24th, 1864, in the south Channel of the Straits of Mackinac. It occurred about mid channel, and a few miles north and west of Cheboygan Light. The night was cold, cloudy and dark: "not *very* dark, but pretty tolerably dark," as some of the witnesses have expressed it.

The circumstances immediately attending the accident, are thus alleged by the parties in their pleadings —on the part of the Libellants:

"Second. That on the 19th day of November, in the year 1864, the aforesaid schooner Preseverance, being tight, staunch and well manned and provided, sailed from the port of Chicago, in the State of Illinois, with a valuable cargo of wheat, on a voyage to the port of Ogdensburgh, in the State of New York.

Third. That during the said voyage, to wit, about 6 o'clock A. M. of the 22d of November, in Lake Michigan, near the Manitou Islands, wind west-northwest, blowing heavy, snowing and freezing, the said schooner Preseverance shipped a heavy sea, which washed away her screen and broke both her colored signal lamps, leaving her with nothing but a white light to exhibit; that about 11 o'clock A. M. of the same day, the master brought the schooner to anchor in the South Manitou harbor, wind northwest and freezing hard, where she remained until about 9 o'clock of the next day, when the master being unable to procure signal lights at that port, the schooner proceeded on her voyage, and at about two o'clock A. M. of the 24th of November, the said schooner was sailing down the straits of Mackinac, about two miles above Cheboygan light, wind *south*, her course lying east by south, the second mate of the said schooner who then had the watch, and was the commanding officer on deck, being on the look-out, discovered lights ahead, and soon discovered that they were borne by a schooner approaching the said schooner Perseverance in a west north-west direction, apparently about half a mile distant, and then bearing about one point on her starboard bow; that, as soon as said second mate, as aforesaid, had discovered the approach of said vessel, he called the captain of said schooner Perseverance,

who came immediately on deck. The approaching vessel hauled up so much, that she shut out her red light, and the schooner kept on her course, the master and mate believing that the approaching vessel would pass clear of her on the starboard hand, until the vessels were nearly abreast, when the approaching vessel kept away again until she showed her red light, when the master of the schooner Perseverance called on the approaching vessel to luff, and several times repeated this request in a loud and audible voice, and at the same time ordered his own man at the wheel to put the wheel hard a starboard. The approaching vessel made no reply, but kept on her course, and in less than two minutes, after first hailing said approaching vessel, she struck the said schooner stem on, abreast the starboard quarter, with such force as to sink her in about two minutes, and was, with her cargo, totally lost, her officers and crew having with difficulty saved their lives by getting on board the said vessel, which was the said schooner Grey Eagle.

Fourth. That the said schooner, by which the said damage was done, proved to be the Grey Eagle aforesaid, under the command of John Beckley as master thereof, and being of about 400 tons burthen, and bound on a voyage from Buffalo to Milwaukee; that at the time when the lights were first discovered from the Perseverance, as hereinbefore mentioned, the Perseverance carried a bright light suspended upon her poll post, which remained there until the schooner went down, and the said light could easily have been seen, and, if she kept a good lookout, must have been seen by her at the distance of half a mile, and in ample time, if she had kept on her course, to have prevented a collision.

Fifth. That, if at the time the said Grey Eagle was first hailed from the Perseverance, and thenceforth she

had had a proper watch on deck, the warning given by the master of the Perseverance, as hereinbefore mentioned, must have been distinctly heard on board the Grey Eagle in season to have enabled her, by putting her helm to starboard, to pass the Perseverance in safety.

Sixth. That at the time when the danger of a collision between the vessels was first perceived, as aforesaid, from the Perseverance, it was impossible for her to get out of the way of the said Grey Eagle."

On the part of the respondents:

Fourth. "That as to the matters contained in the third, fourth, fifth and sixth articles of the said libel, the same are therein in great part falsely and untruly alleged and pleaded, for the truth and fact was and is, and these respondents allege and propound that the schooner Grey Eagle is a vessel of three hundred and eighty tons burthen or thereabouts, and, at the time when the collision hereinafter mentioned and set forth occurred, was enrolled and licensed for the coasting trade, and was employed in her business of commerce and navigation between ports and places in different States of the United States, upon the lakes and navigable waters connecting the said lakes, and was at the time herein mentioned tight, staunch, well manned and provided. That as these respondents are informed and believe and so allege, about the time in that behalf, in the third article of said libel alleged, the said schooner Grey Eagle was sailing up the straits of Mackinac, on a voyage from the port of Buffalo to the port of Milwaukee aforesaid; that when about two miles to the northward and westward of the Cheboygan light, which is about ten miles below the port of Mackinac, the Grey Eagle being in the usual course of vessels coming up the straits, heading west-north-west, the wind being *south-south-west*, the first

mate then had the watch and was the commanding officer on deck; the said schooner had two men on the look-out forward, beside the said commanding officer, who was in his proper position, and a competent man at the wheel, and carried a red light on her port bow and a green light on her starboard bow, of the character and description, in the position and fitted as is required by the regulations in that behalf provided; that when in the place aforesaid, a white light was seen about a mile distant, bearing about a point on the Grey Eagle's port bow, which was supposed to be a light on shore, or upon a vessel at anchor; the Grey Eagle was then kept away about a point and steadied on her course to give birth to the light; the light was not discovered to be a vessel's light in motion by the commanding officer until the Perseverance got within about three lengths of the Grey Eagle, the said light being then nearly ahead and to windward; the light was then supposed to be the binacle light of a vessel that had hauled up all she could to pass the Grey Eagle to windward; the mate not seeing any other light, ordered the helm hard a-port, so as to pass on the port side and keep off and clear the stern of the vessel, and stepped to windward of his vessel, and then heard for the first time a cry from the other vessel to port the helm hard down, but it was too late, the vessels were right together; that the Perseverance, instead of passing the Grey Eagle on the port side, as she should have done, she, without the knowledge of the commanding officer or men of the Grey Eagle, and without any lights to indicate her course, and contrary to any known or prescribed rules of navigation, came right across the bows of the Grey Eagle, and was struck by the Grey Eagle on her starboard quarter in the forward part of the cabin. The Perseverance, at the time the vessels collided, was heading about between north and northeast, right across the

course of the Grey Eagle. That the officers and crew of the Grey Eagle heard no warning from the Perseverance, and had no notice or light to indicate the position or course of the Perseverance, until just at the instant of the collision, when it was impossible for the Grey Eagle to do more than she did do to avoid the collision."

The evidence adduced by the parties is not more than usually conflicting in collision cases: indeed, upon most of the material points in issue, it is easily harmonized. They differ as to the direction of the wind; and though not a controlling, or very material element of fact in the case, we shall take occasion to allude to the evidence on that point hereafter.

The District Court decreed for the respondents, and dismissed the libel. On appeal, the Circuit Court reversed this decree—holding both vessels in fault—and aportioned the damages equally between them.

We append hereto the opinions of the District and Circuit Courts.

I.

The libellants vessel was guilty of the first fault; a premeditated wrong doing, a violation of positive law, which was the proximate cause of, and led directly to the disaster.

She left Chicago on her voyage down the lakes, without any regulation colored lights on board!

She criminally kept her way and course, displaying a lying signal.

The *Perseverance* makes and presents her case in a

tone, and with a degree of cool assurance, that would almost seem intended for amusement. Sailing down a narrow and frequented channel on a dark night, for her own economy of time and profit; holding out a false, delusive and prohibited light; laying her course to the best possible advantage to herself, and adhering to it into the last extremity—she indignantly asks why another vessel, licensed in the observance of every requirement of the occasion, did not keep out of the way? and demands damages for having been thwarted in her reckless diversion! The *Perseverance* exclaims, that her bright light, with a good lookout on the *Grey Eagle*, must have been seen for the distance of half a mile, and in time to have prevented a collision! What her bright light indicated and declared to the other vessel, is utterly ignored. If it were not that, taken in connection with the evidence, this appears to have been an ignorant assumption on the part of the master, it could hardly be treated seriously, or regarded otherwise than as mere facetiæ. The master and mate both assume in their testimony, that, having the starboard tack, they must keep their course, irrespective of whether they were telling truths or lies by their light.

Says the second mate, *List*, when questioned as to what he thought his duty seeing both the red and green lights of the *Grey Eagle* at a distance; (Trans. p. 19).

"*Our place was to keep right straight on our business, and not mind her at all. It was for her to pass us.*"

Q. "Was that what you did do?"

A. "Yes."

Q. "Did you attempt to pass the Grey Eagle on the port side?"

A. "No."

Q. "Did you make any effort to do so?"

A. "No."

And the master Deott on p. 50:

Q. "Did you not know that you were proceeding in violation of an act of Congress regulating lights?"

A. "No, I did not know as I was. If I had left some place where I could have got a light, I should have thought I had done very wrong without them; as I lost them on the lake, it was my duty to get down the lake where I could get some, because vessels are liable to loose light some time."

Q. "Did not you and the first mate talk about the danger of proceeding without proper lights?"

A. "No, we never did talk about the danger, but said it was very bad we did loose our lights; supposed we could not get them until we got to Detroit.".

Q. "Did not the first mate say that he had made up his mind, upon meeting another vessel, to hide the bright light and keep out of the way?"

A. "Not to me; he never mentioned it; another thing, I would not allow a mate to tell me what to do on my vessel."

On page 47 he says, he wanted to improve the weather and fair wind he had, and hurry down as quick as possible.

Brown, the wheelsman, p. 29:

"I had no regard for the course of the Grey Eagle; I steered my course without reference to the Grey Eagle."

Q. "Why did you so steer?"

A. "I so steered because I had such orders from the captain. He told me to steer east-by-south."

Q. "Would you under orders from the captain have kept right on your course, if you had run down half a dozen vessels?"

A. "Yes."

Q. "What do you do in such circumstances, when the captain is in the cabin drying his clothes?"

A. "I go by the second mates order."

The second mate has told us what he thought his duty was. More might be quoted to the same effect. And thus they went on heedlessly, regardless of, and without any suggestion of possible danger, more then as if they had been running a lawful course in broad sun light. These things furnish the key to the disaster. The master would not allow a mate to tell him what to do, on his own vessel—not he! The second mate would go right along about his business—of course he would! The wheelsman would steer his course, and run down vessels, and be justified by the master and second mate:—that was duty, according to the knowledge and dicipline of the *Perseverance!*

Judge GILPIN remarked in *Reeves* v. *the constitution* (Gilp. Rep. 589), "We see that points of etiquette are not confined to great affairs, but may do michief between a pilot and the master of a ferry boat."

B. We said the *Perseverance* left Chicago without her colored lights, required by the act of 1864. This clearly appears from the testimony. And we may add, that such thing a light as she did have, was carried in the wrong place.

No stress appears to have been laid upon this circumstance in the District or Circuit Courts; no notice is taken of it in either of the opinions. The contrary seems to be supposed in the opinion of his Honor, the Circuit Judge, and a degree of sympathy is observable to have been therein manifested for the master of the *Perseverance*, who had lost his *lawful* lights by a peril of the sea—for a man who had not been brought into a technical wrong doing, by his own prior negligence, and illegal default.

We regard the fact as really immaterial, while we are bound by the immediate circumstances surrounding, and proximately causing the accident. But when the libellants make it one of the substantial theories of their case, that they were by the "act of God," thwarted in the observance of the law, and having "due regard to all the dangers of navigation," they adopted a necessary alternative; and this seems to have begotton an excuse for them, in the mind of the Circuit Court, we deem it not inessential to correct the error of fact.

Article III and V, of the act of Congress of 1864, prescribe the lights which sailing vessels under way shall carry.

"(b.) On the starboard side a green light, so con-

structed as to throw an uniform and unbroken light over an area of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night, with a clear atmosphere, of a distance of at least two miles."

"(c.) On the port side, a red light, so constructed," &c.

This evidently contemplates two distinct lights, each with its own screen board, to be separately rigged and carried, apart from each other: as the law has it, one on the starboard, the other on the port side.

See the case of *The Louisa v. The City of Paris*, Holt's Rule of the Road, 22.

The *Perseverance* left Chicago with the "old-fashioned" *light*—not *lights*—in use on the lakes before the act of 1864. This is apparent from the testimony of Alfred List, second mate, the only witness who describes the signal light she carried. (Record, pp. 16–17.)

This man says nothing about screen boards; but he speaks of boxes which the lamps stood in having been carried away in the creek at Chicago. That new boxes were made and placed on the pawl post, where they were when carried away. He says on p. 17, in speaking of the light carried at the time of the collision:

"It was an old fashioned signal lamp of the style used before the new lights came out."

Q. "How many lights would this signal lamp show?"

A. "Three, before it was broken. The red glass and green glass were broken."

Q. "Was that one of the lights you speak of as having been washed away?"

A. "Yes."

He describes a light, readily recognized as a kind in use before the new rules. The circular panes or plates of glass, red, white and green, so arranged as to be made to revolve in a case surrounding the lamp. But one could be exposed at a time, or one-third of the circumference. They were utterly incapable of being made to subserve the purpose and use contemplated by the act.

But one screen is spoken of in the libellants' case. They say in the libel: "Perseverance shipped a heavy sea, which washed away her *screen*, and broke both her signal lamps."

Capt. Deott says, p. 42:

"She shipped a heavy sea forward, washed away *the screen* of our lights, so that it broke our lights."

So far then, as lights are concerned, she left on her voyage, unprepared for any emergency.

The carrying lights on the pawl post—the colored lights, used when under way—has been condemned by judicial decision, as a non-compliance with the act.

Again. The vessel ought to have been provided with extra lights. We venture to say that no master of common prudence, would consider his vessel seaworthy in this respect, without being prepared to replace a light broken. A circumstance so liable to occur, ought to be guarded against; and we think a vessel would and ought to be held liable for the neglect of so ordinary a precaution.

II.

The *Perseverance* was engaged in a direct violation of positive law; and if the unlawful act, was even contributary only to the injury she cannot recover.

Article II enacts: "The lights mentioned in the following articles, AND NO OTHERS, shall be carried in all weather between sunset and sunrise."

She did not set up a false light to avoid any immediate or impending danger. Her grave offence was voluntary. She was on good and safe anchorage ground; and merely to economize a few hours time, she hazarded life and property, and brought upon herself the just penalty of her wrong.

Her non-observance of the regulation was not necessary or even proper; it was a *wilful* default; and there are no circumstances appearing in the case, tending to show that a departure from the regulation was necessary. Had she been compelled by stress of weather, to keep under way, her act, perhaps might be differently considered. Then perhaps the only mate-

rial question to arise would be, whether it was good seamanship, and pardonable to have carried any light at all.

1. Conceding that she lost regulation lights by *vis major*, there was no compulsory necessity for her to have been under way in the night, in that fair-way.

2. She ought, and could have lain at anchor.

3. If she must, or chose to run, she should have hooded her light, and kept out of the way of all other vessels.

4. She violated the letter and spirit of the law, without any such excusatory circumstance as is contemplated by Article XIX.

5. Her running at night with the prohibited light, was entirely voluntary; and hence was a *wilful default*, and departure from the regulations.

In construing the act of July 7th, 1838, Mr. Justice WAYNE said in the case of *Waring et. al. v. Clarke*, 5 How., 465:

"It is said in this case, that the De Soto had not signal lights. Whether this be so or not, we do not determine; but it is certain from some cause or other, that they were not seen, by those navigating the Luda. If they had been, it is not impossible that the collision would have been avoided. We do not put one decision of this case, however, upon this ground; but we do say, if a collision occurs between steamers at night, and one of them has not signal lights, she will be held responsible for all losses, until it is proved that the collision was not the consequence of it."

Mr. Justice GRIER concurred that the De Soto was justly holden for the whole loss. Subsequently—1852—he held a similar doctrine. *Barque Deleware v. Osprey*, 2 Wall., C. C. Rep., 275.

This declaration is in entire harmony with the English decisions, under the "Merchant Shipping Amendment Act" of 1862, from which our regulations are literally borrowed.

Sections 28 and 29, of the English act, are not contained in the Act of Congress of 1864. They simply declare rules of evidence—casting the burden of proof on the vessel guilty of a non-observance of the regulations—to show where the damage by collision or otherwise was occasioned by a non-observance, that the circumstances of the case, rendered a departure from the regulations necessary. The legal effect and consequence of an unexcused violation of the law, remains the same under both the English and American Statutes. The necessity for the enactment of sections 28 and 29, is not perceived. It occurs to us the rule of evidence would have been the same without them.

Cases we refer to as occurring under the act of Parliament are collected in Holt's Rule of the Road.

The Emperor v. The Zephyr, 24.
The Pyrus v. The Smales, 40.
The Louisa v. The City of Paris, 22.

In the latter case, Judge KELLEY and his assessors held both vessels in fault. The court of Delegates reversing this decision said:

"The Cardinal point of departure in it is this, that

the original fault, which drew in its train what followed —the fault without which there would have been no collision—was the fault of the pro-movents below. The Louisa deliberately violated the 3d Article of the statutable regulations. It is clear that her lights were misplaced, and were calculated to mislead, and did mislead, those on board the City of Paris; and the mistake they committed was in leading the steamer to suppose she was a vessel at anchor. It is clear it was that original default which produced the accident, and without which it would not have happened."

No regard was paid as to the alleged fault or negligence of the City of Paris.

In *The Emperor v. The Zephyr*, Dr. Lushington said: "Now, gentlemen, if you think that in any degree, the absence of the lights on board this tug contributed to this collision, there is no doubt, in point of law, whatever other findings and conclusions we may come to, that the tug was to blame."

The New Ed v. The Gustav, 34. Both vessels were charged with fault. In speaking of the alleged want of lights on one of them, Dr. Lushington said, addressing the Elder Bretheren:

"It is an important question for you to determine, no doubt; because if you should come to the conclusion that the lights were not properly exhibited on this occasion, the New Ed cannot recover, and the other party would not be held to blame; for if you should hold the New Ed responsible for not properly exhibiting her lights, no question will arise as to the want of a look-out on the other vessel."

The Emperor v. The Lady of the Lake, 37 Lord Chelmsford, delivering the opinion of the Privy Council, lays down the rule very emphatically. He says: "it is not advisable to allow these important regulations to be satisfied by equivalents, or by anything less than a close and literal adherance to what they prescribe."

The Margaret v. The Tuscar of Glasgow, 44–48. Judge KELLEY quotes from the opinion of the High Court of Admiralty of England, in the case of *The Juliana:*

"I do hope that this, amongst other instances, may be a warning to all those concerned in shipping matters, that they must attend to the Act of Parliament; *for if they do not, and their vessels are ever run down, they can neither recover in this or in any Court whatever.*"

The Emperor v. The Lady of the Lake, 202.

We submit that the distinction made by the District Judge, between this case and *Ward v. Chamberlain*, 21 How., 548–568 is a sound one. But further, we do again insist, that upon this whole record, it is fairly and alone inferable that, but for the wrong and perverseness of those in charge of the *Perseverance*, the collision would not have occurred; and there can be no fault discovered on the other side—if *fault* in such case it can be called—than what was directly occasioned by that false light and refusing to depart from her course.

III.

WHAT MAY EXCUSE THE PARTY UNDER ARTICLE XIX.

In obeying and construing the rules, due regard must be had to all dangers of navigation, and to the special circumstances of the case rendering a departure necessary.

The danger to be avoided, and in order to render a departure justifiable, must be "immediate danger."

The Princessan Louisa v. The Artemas, Holt, 78.
The Newcastle v. Graaf von Rechteren, 247.
The Margaret v. The Emma, 252.
The Planet v. The Aura, 257.

In the latter case, the Court in addressing the Elder Bretheren, and construing the 19th rule, said, the case must be one of absolute necessity, and nothing short of that, would justify the departure.

In the present instance we have suggested only the convenience and profit of the owners, to justify the violation of law. (Capt. Deott, master of *Perseverance*, p. 47. That it was late in the season, and he must improve the weather and winds to "get through that fall.")

The Concordia, 1 Vol. Law Rep. Adm. and Eccls., 29 and 30 Vict., 93.

The Spring, Ibid, 99.

It cannot be said that it was a matter of "absolute necessity" to pass the straits in the night; much less, that in doing so, she should indicate to other vessels that she was at anchor.

The Circuit Court in its opinion, says on this subject:

"I cannot say that a vessel is under all circumstances required to come to anchor at night, if through misfortune, she has lost her signal lights. There may be a state of case in which herself and cargo would be in more peril, by delay at night, than by pursuing a continuous voyage.

We submit, that running at night, or "pursuing a continuous voyage," is not the whole question. If paramount necessity compelled a vessel to pursue her voyage at night, as if she were in the open sea, where she could not come to anchor, it would by no means follow, that she must set up a false signal. She should show some sign, if any at all, that an extraordinary state of things prevailed. Have had ready to exhibit, for instance, on the approach of another vessel, a torch light, such as the evidence shows, was the common practice and usage for vessels to carry, for these very emergencies.

(See testimony of John W. Jones, *Record* 60; Roger Morgan, 62; Hugh W. Jones, 64; William McFadden, 66; Gabriel Gunderson, 68; James M. Kennedy, 71.)

But, what peril was shown in this case? What "*immediate danger*" was pending? None. The possible—or if they please, probable—hazzard of their being closed in at some future time, or other intermediate port or place—does that excuse the false light?

IV.

No fault is shown on the part of the *Grey Eagle*.

The vessels were running on nearly paralell courses. The *Grey Eagle* made the white light of the *Perseverance*, and supposing it to be a light on shore, or a vessel at anchor, she kept away about a point, and steadied on her course. It was not discovered to be the light of a vessel in motion, until they were close aboard one another. The *fact* that this discovery was not made, is indisputable.

The vessels were running at a combined speed of about twelve miles per hour, or a mile in five minutes.

From the pleadings, and the whole evidence, it is probable that the collision took place in less than ten minutes after the *Grey Eagle* saw the false light of the Perseverance.

The only fault charged upon the *Grey Eagle* by the Circuit Court, is, that she did not sooner discover the light to be in motion. In determining that she could and ought to have sooner made the discovery, the Circuit Court has proceeded upon wrong hypotheses, and has erred in law and fact, as we most respectfully, and with deference submit.

The Circuit Court says: "If a white light *usually* represented a vessel at anchor, the officers and seamen of the Grey Eagle had no right to conclude that it *always* did."

This is reversing long established and settled principles of law.

We hardly know how to answer such a proposition.

It seems to us so manifestly wrong and unjust, that it refutes itself in the mere announcement.

That we had not a right to conclude that they were acting in obedience to law?

Then the Circuit Court proceeds to impose upon us the legal duty of a precaution, equal to that demanded in the case the *Perscverance* had announced her real situation. It forces us to presume she was diverting herself with the problem, that a white light *might* mean a vessel close hauled, upon the starboard tack.

The act of Congress does not say that the white light of a sailing vessel shall "*usually* represent a vessel at anchor." It *always does* and *must* represent that, and nothing else.

To hold otherwise, or give any latitude on the subject, would be offering a high premium to violations of solemn law.

The *Grey Eagle* used the diligence which good seamanship dictated and all that the law requires, acting upon the supposition that the *Perseverance* had truthfully indicated her position.

Strout v. Foster, 1 How., 89.

Barque Delaware v. Steamer Osprey, 2 Wall. C. Rep., 274.

Peck v. Sanderson, 17 How., 178.

The Columbus, Abbott's Ad. Rep., 384.

The Grace Girdler, 7 Wall., 196–203.

The Nichols, Ib., 656.

The Circuit Court said: "The obligation of the *Grey Eagle* to use all reasonable precautions to avoid

a collision, was not varied because the Perseverance was running with a prohibited light."

But what was a *reasonable* precaution? That, we insist, which the *apparent* situation and attitude of the vessels called for; and not the adoption of extraordinary and prophetic measures of precaution, which the peculiar circumstances of the event may afterwards show would have prevented it.

When the *Grey Eagle* discovered the white light, the two were running on nearly parallel courses: after the *Grey Eagle* had kept away, only two points divergent from parallel courses. The light thus approaching in so nearly a direct line, there was nothing to indicate that it was in motion. If it had itself, by its own meaning, indicated that it might possibly be in motion, the situation and bearing of the vessels could not have helped to determine the question. But we must look at the case in view of the fact that the white light declared itself to be stationary. Was there anything in the attitude of the vessels, to admonish us that it declared a falsehood? anything to put us to the exercise of superior vigilance?

The Circuit Court errs in fact, when it says that the sails of the *Perseverance* could readily be seen a quarter of a mile off. We take it, this means, that they were so clearly discernable as to indicate her course, and to suggest means of avoiding her. Some expressions of opinion from *Perseverance's* witnesses favor such conclusion. But the *Grey Engle's* men swear they *did not* see her hull or sails in time to avoid the collision.

Vide *Peck v. Sanderson*, 17 How.

In *New Ed. v. The Gustav, Dr. Lushington* was inclined to give very little weight to the argument, that a vessel and the trim of her sails could be seen a distance of 250 yards in a night "dark—not very dark—dark, but not foggy." Holt, 34.

Michael Brown, the wheelsman of the *Perseverance* (Rec. 33), says he could not tell, by the sails, a quarter of a mile off, which way a vessel was steering.

Again,—and to support in argument, the assumption that the *Perseverance's* sails ought to have indicated something to the *Grey Eagle*—it is perdicated as matter of fact, that the "wheelsman of the *Grey Eagle*, saw the light of the *Perseverance twenty minutes before the collision.*" This is error. (See the testimony of Hector McKay, wheelsman, 84 to 90.) On the contrary, he justifies our statement, that the collision must have happened *within ten* minutes from the time, when the *Grey Eagle* made the *false* light of the *Perseveranco.*

True, he says he saw a bright light about twenty minutes before the collision. But when he comes to detail the subsequent circumstances, his ideas of time in this respect, were clearly erroneous. And it was error in fact, to seize on this expression—vague computations of time in such circumstances must necessarily be—and isolated from his other detailed statements, upon which to build a conclusion. We may exclaim with Dr. LUSHINGTON in *The New Ed v. The*

Gustav, "of course it is impossible for them to judge with accuracy, the distance or the time."

Taking the pleadings, and all the evidence together, the two vessels, when they sighted one another—the *Perseverance* at great advantage, seeing the *Grey Eagle*, the latter, blind, and with no advantages whatever, seeing what proved to be the *Perseverance*—they could not have been at a greater distance than one and a half, or at most, two miles; or five, or seven and a half minutes apart.

We cannot forbear the criticism, that in the opinion of the Circuit Court, there are no words of censure upon the *Perseverance*. The misfortune of loosing her signal lights (?) seems to be made an apology for any sort of negligence thereafter: to have licensed her to set at naught all precaution and usage, and go at large with the freedom of the sea, night or day.

V.

The *Grey Eagle* cannot be held responsible for what may afterwards prove to have been an error or mistake, in orders given in a moment of peril and danger, and when the collision had become inevitable or imminent. Nor for mistakes originating in, or proceeding from the fault of the other vessel.

The Genesee Chief, 12 How., 443.

Fashion v. Ward, 6 McLean, 152.

The Northern Indiana, 3 Blatch, 92.

Union S. Co. v. N. Y. and Virg. S. Co., 24 How., 307.

The Nichols, 7 Wall.

The Columbus, Abb. Adm., 384.

It will be seen in the testimony, that in the course of examination, much stress is laid upon the questions, whether the *Grey Eagle*—supposing her to have known the course and position of the Perseverance—ought not either to have kept away more, or to have luffed in the first instance: or, in the last moment, to have ported rather than starboarded her helm. Any mistakes of this kind—we will not go over those alleged below in argument—if any, cannot but be attributed to the first great fault—the criminal wrong of the *Perseverance*.

VI.

If we concede all the fault that is attributed to us by the Circuit Court—all that is by it denominated and condemned as fault—there should have been no division of damages. At most, the faults were egregiously unequal, and the decree dismissing the libel should have been affirmed.

Ralston v. The State Rights, Crabbe, 22.

Wilson v. Envoy, 1 Phil., VIII, 10.

Ward v. The M. Dousman, 6 McLean, 231.

The Nichols, 7 Wall., 664.

HOPKINSON, Judge, said in the case of the *State Rights*, in speaking of the rule to divide damages where both vessels are in fault:

"I presume the plain meaning of this is, that they were both in fault, at the time, and in the acts which

produced the injuries. * * * I should offer another modification to the generality of this rule in cases where the faults are not egregiously unequal."

VII.

THE WIND. As we have sugested, we do not deem the circumstance of the direction of the wind so material as to require any critical review of the testimony on the subject. The libellants seem to have deemed it material in order to show that it was not free; that she was on her starboard tack close hauled, and hence had the right of way, under Article XII.

Here again is the fact ignored, that she was without lights. She had no right to her course, while she could not indicate what that course was. Immunity and protection under the law, can only be afforded her when she is in the observance of the law.

But Article XII has no application. They were governed by Article XI. They were meeting end on or nearly end on. (The Nichols, 7 Wall., 664.) The *Grey Eagle* put her helm to port—the *Perseverance* did not. If the latter had ported her helm, it is most manifest the collision could not have occurred.

The *Perseverance* did what she claims to have been right in doing, had she carried proper lights. Under Article XI, she would be condemned for her course, even with her proper lights.

N. J. EMMONS,
J. H. VAN DYKE,
Of Counsel for Appellees.

OPINIONS OF THE DISTRICT AND CIRCUIT COURTS.

MILLER, JUDGE.

The libellants on their own behalf as owners of the schooner Perseverance, and also on behalf the crew of said schooner, propound against the schooner Grey Eagle, for collision.

The Perseverance sailed from the port of Chicago for the port of Ogdensburg with a valuable cargo of wheat on board.

It is propounded in the third article of the libel, "That during the said voyage, about six o'clock A. M. of the 22d of November, 1864, in Lake Michigan, Near the Manitou Islands, wind north-west, blowing heavy, snowing and freezing, the schooner Perseverance shipped a heavy sea which washed away her screen and broke both her colored signal lamps, leaving her with *nothing but a white light to exhibit.* That about 11 o'clock A. M. of the same day the master brought the schooner to anchor in the South Manitou harbor, wind north-west, freezing hard, where she remained until about nine o'clock of the next day, when the master being unable to procure signal lights at that point, the schooner proceeded on her voyage. And at about two o'clock A. M. of the 24th of November the said schooner was sailing down the straits of Mackinac, about two miles above Cheboygan light, wind south. *The second mate of said schooner who then had the watch and was the commanding officer on deck, being on the look-out, discovered lights ahead, and soon discovered that they were borne by a schooner approaching the schooner Perseverance, in a west north-west direction apparently about half a mile distant,* and then bearing about one point on her starboard bow. As soon as the second mate had discovered the

approach of said vessel he called the captain of the Perseverance, who came immediately on deck. The approaching vessel hauled up so much that she shut out the red light; and the schooner kept on her course, the master and mate believing that the approaching vessel would pass clear of her on the starboard hand, until the vessels were nearly abreast, when the approaching vessel kept away again until she showed her red light, when the master of the Perseverance called to the approaching vessel to luff, and several times repeated this request in a loud and audible voice, and at the same time ordered his own man at the wheel to put the wheel hard a starboard. The approaching vessel made no reply, but kept on her course, and in less than two minutes after hailing the approaching vessel she struck the schooner Perseverance stem on, abreast the starboard quarter with such force as to sink her in about two minutes, and was with her cargo totally lost. Her officers and men with difficulty saved their lives by getting on board the said vessel which was the Grey Eagle."

In the 4th article of the libel it is propounded, "That at the time when the light was first discovered from the Perseverance, the Perseverance carried a bright light suspended upon her pall post, which remained there until she went down, and the said light could easily have been seen."

The answer states, that the schooner Grey Eagle was sailing up the Straits of Mackinac, on a voyage from the port of Buffalo to the port of Milwaukee. That when about two miles to the northward and westward of Cheboygan light, which is about ten miles below the port of Mackinac, the Grey Eagle being in the usual course of vessels coming up the Straits, heading west north-west, the wind being south south-west. The first mate then had the watch and was the commanding officer on deck. The schooner had two men

on the look out forward, besides the commanding officer who was in his position, and a competent man at the wheel. And carried a red light on her port bow, and a green light on her starboard bow, as required by the regulations. A white light was seen about a mile distant bearing about a point on the Grey Eagle's port bow, which was supposed to be a light on shore, or upon a vessel at anchor. The Grey Eagle was then kept away about a point, and steadied on her course to give berth to the light. The light was not discovered to be a vessel's light in motion, by the commanding officer, untill the Perseverance got within about three lengths of the Grey Eagle. The said light being then nearly ahead and to the windward, the light was then supposed to be the binnacle light of a vessel that had hauled up all she could, to pass the Grey Eagle to the windward. The mate not seeing any other light ordered the helm hard a port, so as to pass on the port side, and keep off and clear the stern of the vessel and slip windward of her. He then heard for the first time a cry from the other vessel to put the helm herd down, but it was too late, the vessels came right together. The Perseverance instead of passing the Grey Eagle on the port side as she should have done, she without the knowledge of the commanding officer, or men of the Grey Eagle, and without any lights to indicate her course, and contrary to any prescribed or known rules of navigation, came right across the bows of the Grey Eagle, and was struck by the Grey Eagle on her starboard quarter, forward of her cabin. The Perseverance at the time of the vessels colliding was heading about between north and north-east, right across the course of the Grey Eagle. The officers and men of the Grey Eagle heard no warning from the Perseverance and had no notice or light to indicate the position or course of the Perseverance, until just at the instant of the collision, when it was impossible for the Grey

Eagle to do more than she did, to avoid the collision.

The evidence shows that the Perseverance first observed the Grey Eagle's lights four or five miles off and that the Grey Eagle discovered for the first time that the Perseverance was in motion just before the collision. That the collision took place in the narrowest part of the straits and where there was good anchorage. The straits at that point were about two miles wide. The master of the Perseverance left the second mate on duty and went below where he had remained a considerable time warming himself and drying his clothes until called up by the second mate shortly before the collision.—The evidence shows that he had an abudance of clothing on board."

Before investigating the question upon the testimony, which vessel was in fault, in regard to their management immediately preceeding the collision. The following point raised upon the pleadings and proofs must be settled; dertermination of either against libellants is decisive of this case.

1. That the Perseverance was under way in the night, pursuing her voyage without the lights prescribed by the act of Congress entitled "an act fixing certain rules and regulations for preventing collisions on the water," approved April 22, 1864, and taking effect sixty days thereafter.

Article 2d, of rules concerning lights is. "The lights mentioned in the folling articles *and no others*, shall be carried in all weathers, between sun set and sun rise.

Article 3, provides, that steam vessels, when under way shall carry at the foremast head a bright white light, with a green light on the starboard side, and a red light on the port side, the said green and red lights shall be fitted within board screens projecting at least three feet forward from the light so as to prevent these lights from being seen across the bow.

Article 5—Sailing ships under way, or being towed

shall carry the same lights as steam ships under way, with exception of the *white light which they shall never carry.*

Article 7— Ships, whether steamships or sailing ships, when at anchor in road steads or fairways, shall between sunset and sunrise, exhibit when it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all around the horizon, and at distance of at least one mile.

These rules are so positive that Courts of Admirality will not be justified in any attempt or effort to construe them otherwise than literally; but must require navigators of every description of vessels to observe them strictly. The lights mentioned in the articles *and no others* shall be carried, and sailing ships under way shall never carry *white* lights. Neglect of these rules is not to be justified or excused, upon the plea of necessity or inconvenience.

The loss of the lights of the Perseverance overboard, and her inability to procure the required lights at the Manitou Harbor, did not justify or excuse the master in sailing his vessel down the Straits in the night time, with the prohibited white light alone. He kept his vessel under way, that night in disregard of these rules, and was in fault. He took the risk and must stand it. He perilled his vessel and cargo, and has given no satisfactory excuse, if even an excuse could be considered.

It is urged that the vessel not carrying lights as prescribed, by the rules, might not be solely in fault but that the colliding vessel is also in fault, as in the case of Chamberlain v. Wood, 21 Howard, 548, decided under the act of March 3d, 1849; 9 Statute 382.

Be that as it may, there is no express prohibition in this act, of the carrying a white light as in the present

law. But in this case there is no fault in the Grey Eagle, as it regards the lights, she saw the white light and was endeavoring to stear clear of the vessel supposed to be at anchor, from being so signalled according to the rules, by her white light. And she did not observe the Perseverance to be in motion until immediately before the collision. There being good anchorage the Perseverance should have come to anchor, and not have attempted to run the strait in the night without the required green and red lights, and carrying the prohibited white light.

2d. The second objection raised by respondent to a decree in favor of libellants, is, that the collision took place during the master's watch, on the Perseverance, who went below, leaving the vessel in charge of the second mate. It is proven that shortly before the collision, the second mate under an apprehension of danger left his post and went below to call the master, who came on deck a short time before the collision.

The theory of lookouts is so well established as not to require reference to authorities. And vessels are uniformly condemned for not having sufficient look outs, such also is and should be the rule in respect to the officer's watch. A vessel is more strictly under the command of the master and first mate. The second mate as in this case is not employed or depended upon, for his nautical skill, nor were his responsibilities in this particular, equal to those of his two superior officers. In this case, the vessel was under way descending the narrowest part of the Straits of Mackinac, at six knots an hour, without the required green and red lights, and carrying the prohibited white light. The master under these circumstances should have been on deck. He being wet and cold is not excuse for absence from his post under the circumstsances. He had on board an abundance of clothing, and should not have remained below for the purpose of drying

his wet clothes. The second mate did not go below to call him up on deck until the vessels were in close proximity. In this the Perseverance was in fault. Harvey v. The Baltimore Steam Packet Co., 23 Howard, 287. Union Steam Co., v. New York and Virginia Steamship Co., 24 Howard 307.

For these reasons the libel will be dismissed; without any further examination of the great mass of evidence in the cause.

GREENING,	}	IN ADMIRALTY.
vs.	}	In Circuit Court for
SCHOONER GREY EAGLE,	}	District of Wis.

The schooner Perseverance sailed from Chicago on the 19th day of November, 1864, with a cargo of wheat, bound for Ogdensburg. When in Lake Michigan, off the Manitou Islands, during a severe storm, she lost her signal lights which she was unable to replace, after making efforts to do so. Owing to the lateness of the season, the severity of the weather, and the extent of her voyage, being unwilling to incur the delay of lying by at night, she proceeded on her way, showing at night a white light, in order to call the attention of other vessels to her. While running through the straits of Mackinac at two o'clock on the morning of the twenty-fourth of November, the schooner Grey Eagle, bound from Buffalo to Milwaukee, collided with her, and destroyed both vessel and cargo.

It is argued, as the Perseverance was running without her regular lights, and with the prohibited white light, she must be measured with all the damages, although the Court should find that the Grey Eagle was also in fault. This position is untenable. It is unquestionably true, that the rules of navigation, as pre-

scribed by the act of Congress, must be observed, "but in obeying and construing these rules, due regard must be had to all dangers of navigation." The fact that the Perseverance had a light prohibited to vessels while sailing, did not of itself, absolve the Grey Eagle from the observance of that degree of caution, care and nautical skill, which the exegencies of the case required. If a white light *usually* represented a vessel at anchor, the officers and seamen of the Grey Eagle had no right to conclude that it *always* did. It was their duty, from the moment the light was seen, to have watched it carefully, in order to ascertain from its bearings, whether the vessel was in motion or at anchor. And if, in the exercise of ordinary nautical skill and care, *this* could have been done, and was omitted, and this omission contributed to the accident, then the Grey Eagle must share the burdens of the loss, although the Perseverance was in fault in running with a prohibited light.

I cannot say that a vessel is under all circumstances required to come to ancher at night, if through misfortune she has lost her signal lights. There may be a state of case in which herself and cargo would be in more peril, by delay at night, than by pursuing a continuous voyage. It is true, she encounters serious hazard, by running at night, but she is so far protected, that every other vessel occupying the same waters, must be navigated with reasonable care, skill and caution.

The obligation of the Grey Eagle to use all reasonable precautions to avoid a collision, was not varied, because the Perseverance was running with a prohibited light. The present case is one of mutual fault, which, in my opinion, requires a division of damages. It is unnecessary to discuss the evidence at length, in order to show carelessness and fault on the part of the Grey Eagle. She is convicted of ordinary want of seamanship in her own statement of the collision.

The answer says: "A white light was seen about a "mile distant, which was supposed to be a light on "shore or upon a vessel at anchor. The Grey Eagle was "then kept away about a point, and steadied on her "course, to give berth to the light. The light was not "discovered to be a vessel's light in motion by the "commanding officer, until the Perseverance got with-"in about three lengths of the vessel."

And why was this important discovery not sooner made? The night was not too dark to do it, for the evidence is that the sails of the Perseverance could readily have been seen a quarter of a mile off, and the wheelsman of the Grey Eagle (in not the best portion of the vessel to see the light,) nevertheless, saw it, twenty minutes before the collision.

If the light was discovered a mile off, is it not apparent that ordinary vigilance would have disclosed to those on board the Grey Eagle, that it was on a vessel in motion, long before there was any danger of collision? The vessels could not have kept their respective courses, without it being evident to a watchful seaman, that the light was in motion. I cannot, for want of time, analize the evidence, so as to show how the collision could have been avoided, if the light of the Perseverance had been properly watched. It is very clear, the persons in charge of the Grey Eagle were so confident the light was stationary, that they rested in security, and omitted the observations which good and prudent seamanship required to be made, and which, if made, could not have failed to have disclosed to them the character of the light, and enabled them to keep out of the way of the Perseverance. *This* conduct on the part of the Grey Eagle, contributed very materially to the collision, and that vessel should share with the Perseverance the consequences of that disaster.

Supreme Court of the United States.

GUIDO PFISTER AND NICHOLAS JOHNSON,

Claimants of the Schooner Grey Eagle,

APPELLANTS,

vs.

JOHN GREENING AND CHARLES N. DEOTT,

APPELLEES.

Appeal from the Circuit Court of the United States for the District of Wisconsin.

BRIEF FOR THE APPELLEES

BY

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BRIEF FOR THE APPELLEES.

This case is so fully stated in the printed brief of the appellants, and in the opinions of the District and Circuit Courts, attached thereto, that anything like a further statement, in detail, would seem to be unnecessary.

In general it may be said:

That the collision by which the vessel of the libellants was sunk, occurred in the night time, November 24, 1864, in the Straits of Mackinac.

The libellants' vessel, the Perseverance, laden with wheat, was on a voyage from Chicago to Ogdensburg and bound down the Straits. The Grey Eagle was bound up.

When they made each other the Perseverance was sailing E. by S. on her starboard tack, the wind being south, and forward of her beam. The Grey Eagle was on the larboard tack, on a course of W. N. W. with the wind abaft her beam.

The Perseverance, under the rules, kept her course until the instant of collision. The Grey Eagle changed her course, being on the larboard tack, as she had a right to do, but the proof shows, first, that no change was necessary; and second, that the change, as made, involving the proverbially hazardous experiment of attempting to cross the bows of an approaching vessel, was the very thing which brought about the collision.

To illustrate this we append a Diagram, which we submit as a substantial showing on the pleadings and evidence of how the vessels made, and approached each other, and finally collided.

Now, on this general state of facts the District and Circuit Courts arrived at different conclusions, and the attaching of copies of the opinions of these courts respectively to the appellants' brief, enables us, and we trust authorizes us, to discuss the case as now presented to this Court, with some reference to the findings and deductions already of *quasi* record in the cause.

The District Court held:

1st. That the libellants' vessel, the Perseverance, was in fault for sailing without the required lights, and with a prohibited white light.

2d. For having its deck in charge of the second mate, until a short time before the collision.

3d. That (page 30 of appellants' brief,) "*the determination of either of these points against the libellants is decisive of this case.*

And, having thus found, he concludes, (page 33 of appellants' brief,) "for these reasons the libel will be dimissed, *without any further examination of the great mass of evidence in the cause.*"

And thus the broad position is assumed, that if it appears that a libelling vessel is in fault as to lights, violating the law in that particular, it absolutely precludes, or at least dispenses with, all further inquiry into the conduct of the other vessel.

The learned Judge of the Circuit Court, on the other hand, regarding it as possible that there might be *mutual* fault in *such* a case, as well as in other cases where the complaining vessel herself was found to have been in violation of other equally important laws or rules of navigation, but where divisions of damages are constantly pronounced for, proceeded further in his inquiries, and found, on the pleadings themselves, as well as the evidence, *that the respondents' vessel was guilty of the gravest fault*, and but for which notwithstanding the absence of proper lights on the complaining vessel, the collision might easily have been avoided. and so divided the damages.

We respectfully submit then:

I.

That on the established doctrine of this Court that the findings of the Circuit Court, unless palpably erroneous, are to be taken as final on questions of fact, and the Circuit Court having found, as a fact, that there were grave contributing faults on the part of the appellants vessel, we are, in strictness, relieved from further discussion of the case, unless it could, by possibility, be apprehended that this Court might be inclined to engraft an exception, without a reason, upon the general rule of division *where both vessels are found to be in fault.*

As to the doctrine in appeal cases, we cite:

The Grafton, 1 Bl. C. C. 173.

The Sampson, 4 Bl. C. C. 28.

Walsh et al. vs. Rogers et al. 13 Howard 283. 1 Black 414-17 2 Black 581

Newell vs. Norton and Ship 3 Wallace, 257-268.

Nor is there any difference of opinion between the two Courts below on the question of fault on the part of the Defendants, because the District Court declines substantially to inquire into these faults.

But it may be proper for us to present the case further, and more in detail, as follows:

II.

As to faults imputed to libellants' vessel:

And as to these, as we have not appealed from the finding of the Circuit Court on this or any branch of the case, we merely submit, without elaborate discussion:

1st. That the exigencies of the vessel, having reference to the lateness of the season, the extent of the voyage to be accomplished and her duty toward her cargo, made it improper for her to incur the delay of lying by at night. She had lost her signal lights by stress of weather, and had been unable to replace them.

It was then a question of lying by at night, incurring a probable loss of her voyage, and great responsibilities as to both vessel and cargo, or proceeding, showing the best light she could to call attention of other vessels to her, *the night, as we shall see in another connection, being light enough for other vessels to see her and determine her course in ample time to avoid her.* Undoubtedly the rules of navigation prescribed by the act of April 29, 1864, are to be observed. But article 19 expressly provides that "in obeying and construing these rules due regard must be had to all dangers of navigation"

2d. That the proof shows (see depositions of the Captain and Mate of the Perseverance,) that the Captain was on deck in such ample season before the collision, that his prior absence from it had obviously no connection whatever with the result, and was in no sense a contributing cause.

But suppose, for the purposes of this hearing, that the first two findings of the District Court as to fault on the part of the libellants, vessel were well sustained by the evidence, then we come to the third and final proposition of that Court, that "the determination of either of these points against the libellants is decisive of the case." And

it is evident from the whole decision of the District Judge that no grave consideration was given to the question, whether there might not have been *mutual* fault which would require a *division of the damages.*

III.

It is to this proposition and to our claim, that the case, if it shows fault on our part, equally shows gross fault on the part of the Grey Eagle, that we mainly ask the consideration of this Court.

And in presenting this branch of the case, also, we defer for the present any extended discussion, or analysis of the evidence, asking the Court now to examine it, *in connection with the pleadings.*

And we submit:

1st. *That the answer itself shows gross carelessness and fault on the part of the Grey Eagle.* (Rec. p. 7.)

"A white light was seen about a mile distant which was supposed "to be a light on shore or upon a vessel at anchor. The Grey "Eagle was then kept away about a point and steadied in her course "to give berth to the light. *The light* was not discovered to be a "vessel's light in motion, by the commanding officer, until the Perse-"verance got within about three lengths of the vessel." *Why?*

And we submit that the answer to this question inevitably convicts the Grey Eagle of the grossest fault, without which it is demonstrable the collision would not have happened.

The light was *discovered* a mile away. Grant that its *first* indication would be of a vessel at anchor. *Is it not certain that the least vigilance or even ordinary attention to the light after it was made, would at once have corrected the error*, and yet it was *not* discovered till they were within "about three lengths" of each other.

Let us examine this a little. The courses of the vessels respectively, at first, were E. by S. and W. N. W., obviously converging courses. (*See libel and answer.*) The Perseverance held her course of E. by S., close hauled, *until the very instant of collision*, as was her duty.

The Grey Eagle on discovering our light, a mile distant, says she made it about a point over her larboard bow. She then ported about a point, to go to the right, or to the starboard of our light. (See answer.) Her course was thus made N. W. by W., one point higher up than her first course of W. N. W. Now if the light had been *stationary*, after the Grey Eagle had laid her course so as to avoid it, it would have continued to bear over the larboard bow of the Grey Eagle, *increasing* in its bearings as the light was approached.

This they must have known would be the fact if the light was *stationary*. But as our vessel *advanced*, the Grey Eagle would have to be constantly changing her course to hold our light on her larboard.

In point of fact, as the result showed and as must necessarily have been the fact, our light must [redacted] have got over on their *starboard* bow, by the advance of our vessel, and constantly increased in its bearings off the starboard bow of the Grey Eagle, as our vessel advanced, which they must have known could not be if the light was stationary. (See Diagram attached.)

All this, with the least watching of the light after the first observation had been made, would have admonished the Grey Eagle that our light was *moving*, and that as she (the Grey Eagle) had the wind free and on the larboard side, it was her duty to avoid our vessel which had the wind on her starboard side, (See article 12 of the act above referred to.) And she would have discovered this in ample time to have done so, if she had given any attention to the movements of our light. (Vide Diagram)

Now unless the Court is prepared to hold that a vessel having once discovered a light in her path and shaped her course so as to clear it, provided it is such a light as it is supposed to be, *it is then no longer necessary to give it any attention whatever*, to guard against the possibility of her having, as in this case been deprived of her proper lights, and that the lights she was exhibiting might be misconstrued; in other words, unless the rule heretofore established that all lights which a vessel sees she has got to pass should be carefully

watched and noted *until* safely passed, is to be reversed, then, we submit, that such vigilance and attention were required of this vessel; that their ordinary exercise in observing the changes in the bearings of our light would have shown them that it was not a stationary but a moving light, long before there was any danger of collision, and that she could then have easily avoided it, and must be held in grave fault for not doing so, resulting in a division of damages according to the established practice in such cases.

2d. The night was such that the sails of the Perseverance could easily *have been seen a quarter of a mile off.*

See testimony of Deott, Brown and List for libellants. What excuse then is there, for the Grey Eagle not discovering that the light they had made was not a stationary light (but belonged to a vessel under way,) until they were within "about three lengths" of the collision? Is it to be held that a careless, hasty observation of objects ahead which a vessel is rapidly nearing, is sufficient, and that *upon* such an observation, it is good and prudent seamanship to *dismiss all further care or attention to the matter?* Will such a rule contribute to the safety of navigation?

And in this connection we beg to refer to *Chamberlain et al. vs. Ward et al.*, 21 Howard 548. There the Defendants' vessel was held in fault for not displaying the proper lights. "The weight of the testimony" the Court say, "tends strongly to show that they were little better than if they had been actually extinguished." (Page 565.) What stronger case could be put as to fault in respect to lights? And yet the court go on to inquire whether the night was not such as to have enabled the steamer to have seen the propeller, though substantially without any lights, in ample time to have avoided the collision, and find the steamer *equally in fault for not doing so, and divide the damages.*

The Court say *"all we mean to decide is, that the neglect of the propeller to show signal lights did not vary the obligations of the Atlantic, to observe the rules of navigation and to adopt all reasona-*

ble and necessary precaution to prevent the collision, &c." (Page 568.)

Hence we say that our carrying an improper light did not exonerate the Grey Eagle from exercising vigilance in respect to it; and further that as soon as our sails could be well seen on the water, she was certainly bound to see them, and that her admitted failure as to both of these things requires her, under the law, to bear a portion of our loss.

3d. When, after neglecting to watch our light, which their own wheelsman says could be seen twenty minutes before the collision, or to discover the spread sails of our vessel, which the witnesses agree could have been seen a quarter of a mile off, if they had been keeping a good lookout, they discover that our vessel is under way, then the order given of "hard up" was just the wrong one, and brought about the collision, which might then have easily been avoided by giving the opposite order of "hard down."

This, three of their own witnesses testify to.

Hugh Leach, Rec. p. 79.

Hector McKay, p. 88.

N. McIntyre, p. 83.

They even went so far, one of them, their own lookout who had been watching the light, as to cry out "hard down," or "starboard," but the mate in charge—who showed by his own deposition that he had not been watching the light, indeed that he was in such position with reference to his own sails and booms that he *could not* watch it properly—gives the wrong and fatal order of hard up or port, which his own men see is wrong and so testify.

And thus the collision is brought about, when if the mate in charge of the deck of the Grey Eagle had been watching our light and vessel *as his own men had*, and as it was *his* especial duty to do until safely passed, he would not have been thus taken by surprise and have given the wrong order.

We might comment upon the further statement in the answer that when near to, the light was momentarily taken for the binnacle light of a vessel trying to get to the windward. If false, and a subterfuge

sought to be set up in excuse for the obviously wrong order of "port," then, as a subterfuge, it is a weak one. If true, then it adds force to our claim, that from the time our light was first made, down to the time when she was close aboard of us, the officer in charge of the Grey Eagle had given no sort of attention to it, or to our sails when they hove in sight, although he knew from his first observation that it lay directly in his path, and had got to be avoided whether it was "a light at anchor or a light on shore."

On his first supposition, as stated in his answer as above, he should have watched it so as properly to avoid it. If he had watched it he would have discovered that it was in motion, could have told its course by its changes of bearing, would have seen our sails a quarter of a mile off, would never have run down within three lengths of us and then in his confusion given an order which his own men who had been observing the light and vessel cried out against as wrong, and which the result proved was fatal to our vessel.

IV.

Believing it to be perfectly plain, then, from their own answer, and if not, then from the answer and the testimony that, if they had used ordinary vigilance they might easily have avoided us, the only remaining inquiry would seem to be, *on whom was the duty of avoiding the other.*

There is some variation in the testimony as to the direction of the wind, but we claim that the weight of the evidence shows that it was East of South. Granting that it was southerly, then as all the testimony shows, we were sailing on a tack, close hauled, and they with the wind free or abaft the beam.

The long established rule in such a case is that the vessel close hauled shall keep her course, and the vessel with the wind free shall shape her course so as to avoid her. *St. John vs. Paine*, 10 Howard, 557.

We kept our course then down to the moment of the collision, as

required. It was her duty to watch and avoid us by giving us a wide berth.

Again. Referring to rule 12 of the statute of 1864:

"If one of them has the wind aft, the ship which is to windward "shall keep out of the way of the ship which is to the leeward."

And the Grey Eagle, obviously, had the wind aft, and was to the windward.

Again. Article 12 above referred to:

"When two sailing vessels are crossing so as to involve risk of "collision, then, if they have the wind on different sides, the ship with "the wind on the port side shall keep out way of the of the ship with "the wind on the starboard side," &c.

So we say, that under both branches of this rule, it was the duty of the Grey Eagle to avoid the Perseverance, and the correlative duty of the Perseverance to keep her course. (Article 18.) That these two vessels were "crossing so as to involve risk of collision" and therefore came within the 12th rule, is obvious, from the testimony of the witnesses of the Grey Eagle, who say that ten or twelve minutes before the collision, the course of the Grey Eagle was changed to a course still more intersecting to the course of our vessel, (which was E. by S.) that is, according to the answer to a point still more northward of W. N. W., which made the lines of progress still more converging, and of course intersecting, or they never could have come together. Hence they were "*crossing so as to involve the risk of collision.*". And it was the duty of the Grey Eagle, having the wind on her larboard or port side, to avoid us, which we have seen she might easily have done, had she watched our light and vessel with ordinary vigilance and attention, or if the officer in command had watched us *with half the vigilance that seems to have been exercised by his own irresponsible seamen.*

V.

And here, at the risk of partial repetition, we submit a general

comparison of the conduct of these vessels, *and specifications, more in detail, of faults on the part of the Defendant.*

1st. As to the Perseverance. She was seaworthy in all respects when she sailed. Possibly she had not two separate colored lights, but she had a signal light, for both colors, such as for many years had been prescribed by law, and it may be noted that the Act of Congress had gone into effect so recently, (September 24th, and in the middle of the season of navigation,) that an entire change throughout the vast shipping of these inland waters, was obviously impossible.

This signal light she lost; she endeavored to supply this loss, but failed. She was thus a vessel disabled by storm, but she was laden with a valuable cargo; she was in the last days, and perhaps hours, of navigation; she had a long voyage before her; rivers, lakes, and the Welland Canal still to pass through, liable at any moment to be frozen up. Every hour, especially of fair wind, was precious to her. It was her duty to keep on, showing the best light she could, and keeping vigilant watch and care. Their expert, J. W. Jones, Rec. p. 61, says: "I should have pushed through." She passed numerous vessels and propellers safely. (Captain Deott, Rec. p. 47.) The night was not such as to prevent her sails from being seen in ample season to admonish other vessels that she was in motion, and not at anchor. Hence we submit, that there were no such hazards in her pursuing her voyage, under these necessitous circumstances, as would make her keeping on a fault of seamanship, whatever weight might be given it as a contributing cause, which might divide damages. Certainly it was not such an "egregious fault," as claimed by counsel, as should thrust her entirely outside the pale of legal consideration.

2nd. *As to the specific circumstances of fault on the part of the Grey Eagle. Defendant.*

a. She might well have entertained doubts, notwithstanding the white light, as to whether we were in fact at anchor.

The Perseverance was in the fair way, or mid-channel, and the anchorage ground was outside of that. Rec. p. 78.

The wind was fair, equally fair as their witnesses say, and as is obvious from the chart, for vessels going up or down the Straits. The weather, too, was fair. Therefore why at anchor unless disabled, and no storm was pending, or so recent as to indicate disabled vessels in the Straits. And the Act, as well as rules of the Supervisors, would require a light, if at anchor, to be hung higher up, and the testimony is that anchor lights are usually hung in the rigging.

Besides the change of law had been so recent that it might well be that the white light, until then borne by vessels with the wind abeam or abaft, was not yet discarded.

But next.

b. Our light was made a mile and a half off. The answer says, (page 7,) about a mile distant. Bennett (page 76) says "to exceed ten minutes off." McKay says, "twenty minutes," page 84. The printed argument of appellants (page 20) says "it is possible that the collision took place in less than ten minutes" after the light was made. "They could not have been at a greater distance than one and a half or at most two miles, or five or seven and a half minutes apart." (Appellants' brief, p. 24.)

Granting then, that the inference from the light might be that it was a vessel at anchor or a light on shore, she would still be bound to observe it until safely passed; 1st, because of the suggestions of doubt, (supra *a.*); 2nd, because they were as yet uncertain whether it was on a vessel or on shore; 3d, in order to pass it safely giving it a proper berth; 4th, because in the interval of time she might weigh anchor and be in motion; 5th, because the law of vigilance is not fulfilled by a mere glance at an object ahead to be passed, and then, an absolutely blind reliance that the other vessel is observing and will observe the law, so that no further watching can, by possibility, be necessary. For on the same principle suppose a steamer makes a vessel's light, which indicates by its color her course and line of progress,

and because the law requires the vessel to keep her course till passed, the steamer adapts her course to that, and to the presumption that the vessel will obey the law, and then all hands, except the wheelsman, go below. The vessel changes her course, which is a fault, but she does it in time for the steamer to have noticed the change, and to have avoided the collision, which, for want of vigilance, she fails to do. Are steamers in such cases ever excused from contributing? Like illustrations suggest themselves as to the passing of two sail craft, the rules for which are found in the same Act that prescribes as to steamer and vessel lights, but where the usualness and likelihood of their observance is never allowed to exclude the *possibility* of their non-observance, so as to dispense with continuous watching.

c. By such watching, it is perfectly obvious, as hereinbefore discussed, that in running a mile and a half, and during a period of from "five to seven and a half" minutes, the light would have been seen to be in motion, especially as the vessels were approaching on *converging* lines, (as per Diagram,) when the constant changes of bearings would have been immediately admonitory, and decisive that the light was *not* stationary.

d. The conduct of the mate in charge of the Grey Eagle, and of the men on deck in reference to our vessel, was *bad from first to last*, and we would ask the Court to read the testimony of those witnesses, commencing with page 74, which shows:

1st. That our light was not *reported at all* to the mate in charge of the Grey Eagle, until almost the moment of collision. Bennett, p. 76; Leech, pp. 79-80; John Johnson, (mate,) p. 126, says he was two or three lengths off when he gave the order "hard up." "I" (p. 129) he says "ordered the wheel up as soon as I saw it." We submit that the failure on the part of the lookouts forward to report the light or its changes, to the officer of the deck, until the very moment of collision, thus leading him, in his confusion, to give just the wrong order, (for although he appears to have seen the light earlier, and

ported a point, he does not appear to have continued to watch it as the men did,) was a grave fault. He cried out "hard up," while his men forward, who had been watching the light, cried out "hard down," which, if executed, would have cleared our vessel.

And this wrong and fatal error, therefore, was the direct consequence of the lookout not reporting the light and its movements, and in the mate not himself watching it and them. Is it not the inflexible rule that *all* lights ahead should be reported to the officer of the deck, as soon as made? If this had been done, or if the mate had watched the light, as was his duty, from the time he made it until he passed it, it is plain the collision could easily have been avoided by him.

e. The hard-down, or starboard order, would obviously have cleared us. It seems to be conceded in the appellants' brief (p. 24) that the wrong order was given, but it is argued that a party is not responsible for wrong orders given suddenly in confusion forced upon them. But is not the answer to this claim of exemption, that in *this* case the suddenness and confusion were sprung upon them by *their own want of vigilance?* The men forward, who had been watching, but not reporting, as they should have done, were not so surprised but that they saw at once the proper order to be given, and Leech, the lookout, actually ran aft and called out "hard down" simultaneously with the mate's wrong order of "hard up," (pp. 75-78,) then "fifteen rods off. Putting the wheel down was the only chance to save the vessel," and that was obviously an ample distance, she having struck us well aft on the starboard quarter.

f. The sails of our vessel were to be seen at least a quarter of a mile off. *Vide* findings of Circuit Court.

g. "*She* (the Grey Eagle) *is convicted of want of ordinary seamanship in her own statement of the collision*," says the opinion of the Circuit Court, and is it not apparent that these specifications of fault on her part abundantly sustain the conclusion therein announced by the Court upon the evidence, that "*This conduct on the part of the Grey Eagle contributed very materially to the*

collision, and that vessel should share with the Perseverance the consequences of that disaster."

VI.

And finally:

It has not seemed to us imperative, or indeed important, that we should review in their order the points contained in the learned, and somewhat vivacious, argument filed by the appellants. Nor that we should analyze the English cases to show that while they attach, as rightfully they may, great importance to the regulations in respect to lights, they nowhere advance the anomalous doctrine that the want of lights, or improper lights, *per se*, conclude the case of a complaining vessel. These cases, as well as the American cases cited, while they hold that such violation is to be taken as a fault, probably preventing a full recovery, or any recovery, unless contributing fault is proven on the other side, leave the question of mutual fault still open to inquiry. And this, we submit, is the definitely settled doctrine of the American Admiralty, as found in 21 Howard 548-568, above cited, and in strict analogy with that which prevails in all other classes of cases, where the rules of navigation, statutory or otherwise, may happen to have been violated, but where this is never construed into a license to the other party to *abandon vigilance and rely on law*.

vide Lushington's Ad. Re. 329 (The Aurora)

The opinion of the Circuit Court, which we append, is founded on this established and wholesome doctrine of mutual vigilance and skill, or mutual fault and burden. Its findings are so clear and positive, as to grave contributing faults on the part of the Defendant, and so inevitable, as it seems to us, in its nautical and legal deductions, that we would ask it to be considered as a leading part of our argument in this cause.

Respectfully submitted,

GEORGE WILLEY,
JOHN E. CARY.

CLEVELAND, OHIO, February 26, 1870.

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vide Washington's Ad. Re. 327 (The Aurora)

The opinion of the Circuit Court, which we append, is founded on this established and wholesome doctrine of mutual vigilance and skill, or mutual fault and burden. Its findings are so clear and positive, as to grave contributing faults on the part of the Defendant, and so inevitable, as it seems to us, in its nautical and legal deductions, that we would ask it to be considered as a leading part of our argument in this cause.

Respectfully submitted,

GEORGE WILLEY,
JOHN E. CARY.

CLEVELAND, OHIO, February 26, 1870.

GREENING, VS. SCHOONER GREY EAGLE,

IN ADMIRALTY.

In Circuit Court for District of Wisconsin.

OPINION OF JUSTICE DAVIS.

The schooner Perseverance sailed from Chicago on the 19th day of November, 1864. with a cargo of wheat, bound for Ogdensburg. When in Lake Michigan, off the Manitou Islands, during a severe storm, she lost her signal lights which she was unable to replace, after making efforts to do so. Owing to the lateness of the season, the severity of the weather, and the extent of her voyage, being unwilling to incur the delay of lying by at night, she proceeded on her way, showing at night a white light, in order to call the attention of other vessels to her. While running through the Straits of Mackinac at two o'clock on the morning of the twenty-fourth of November, the schooner Grey Eagle, bound from Buffalo to Milwaukee, collided with her, and destroyed both vessel and cargo.

It is argued, as the Perseverance was running without her regular lights, and with the prohibited white light, she must be measured with all the damages, although the Court should find that the Grey Eagle was also in fault. This position is untenable. It is unquestionably true, that the rules of navigation, as prescribed by the Act of Congress, must be observed, "but in obeying and construing these rules, due regard must be had to all dangers of navigation." The fact that the Perseverance had a light prohibited to vessels while sailing, did not of itself, absolve the Grey Eagle from the observance of that degree of caution, care and nautical skill, which the exigen-

cies of the case required. If a white light *usually* represented a vessel at anchor, the officers and seamen of the Grey Eagle had no right to conclude that it *always* did. It was their duty, from the moment the light was seen, to have watched it carefully, in order to ascertain from its bearings, whether the vessel was in motion or at anchor. And if, in the exercise of ordinary nautical skill and care, *this* could have been done, and was omitted, and this omission contributed to the accident, then the Grey Eagle must share the burdens of the loss, although the Perseverance was in fault in running with a prohibited light.

I cannot say that a vessel is under all circumstances required to come to anchor at night, if through misfortune she has lost her signal lights. There may be a state of case in which herself and cargo would be in more peril, by delay at night, than by pursuing a continuous voyage. It is true, she encounters serious hazard by running at night, but she is so far protected, that every other vessel occupying the same waters must be navigated with reasonable care, skill and caution.

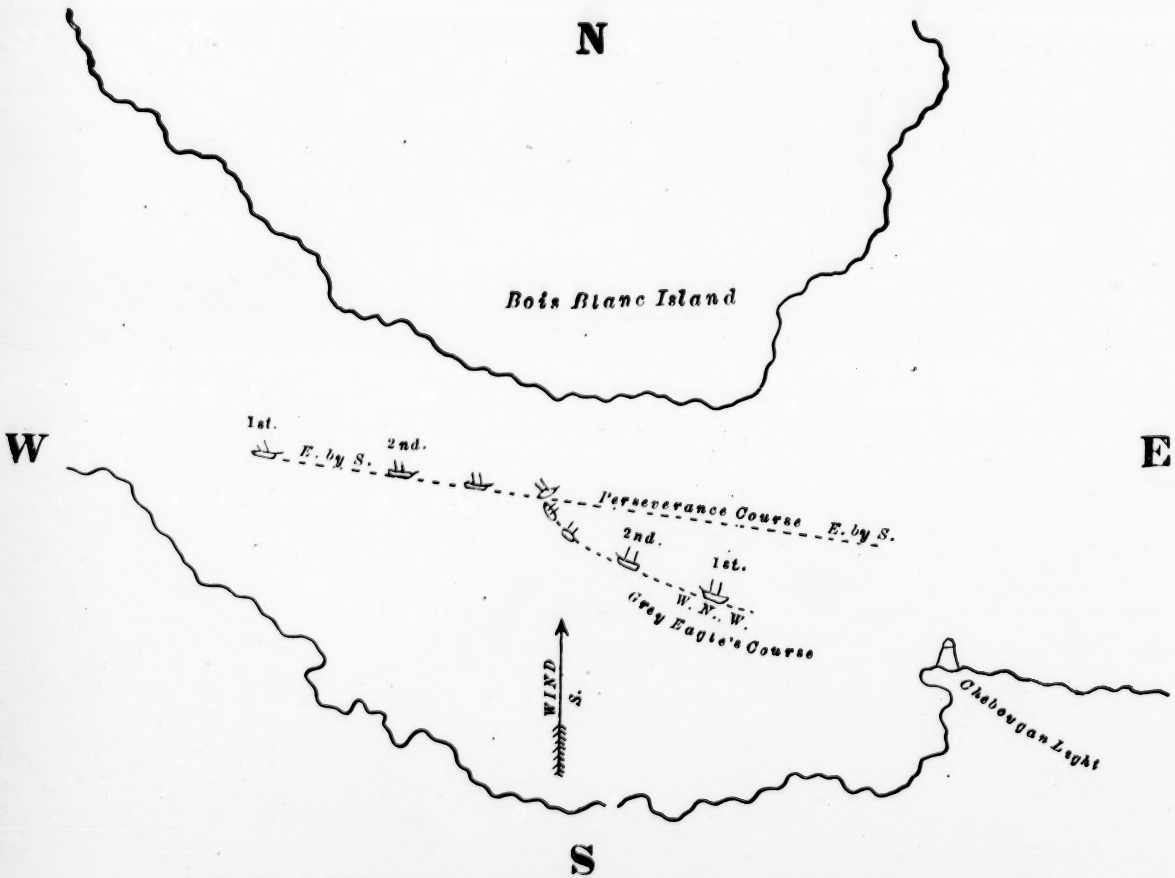
The obligation of the Grey Eagle to use all reasonable precautions to avoid a collision, was not varied because the Perseverance was running with a prohibited light. The present case is one of mutual fault, which, in my opinion, requires a division of damages. It is unnecessary to discuss the evidence at length, in order to show carelessness and fault on the part of the Grey Eagle. She is convicted of ordinary want of seamanship in her own statement of the collision.

The answer says: "A white light was seen about a mile distant, "which was supposed to be a light on shore or upon a vessel at "anchor. The Grey Eagle was then kept away about a point, and "steadied on her course, to give berth to the light. The light was "not discovered to be a vessel's light in motion by the commanding "officer, until the Perseverance got within about three lengths of the "vessel."

And why was this important discovery not sooner made? The night was not too dark to do it, for the evidence is that the sails of the Perseverance could readily have been seen a quarter of a mile off, and the wheelsman of the Grey Eagle (in not the best portion of the vessel to see the light,) nevertheless, saw it, twenty minutes before the collision.

If the light was discovered a mile off, is it not apparent that ordinary vigilance would have disclosed to those on board the Grey Eagle, that it was on a vessel in motion, long before there was any

danger of collision? The vessels could not have kept their respective courses, without it being evident to a watchful seaman, that the light was in motion. I cannot, for want of time, analyze the evidence so as to show how the collision could have been avoided, if the light of the Perseverance had been properly watched. It is very clear, the persons in charge of the Grey Eagle were so confident the light was stationary, that they rested in security, and omitted the observations which good and prudent seamanship required to be made, and which, if made, could not have failed to have disclosed to them the character of the light, and enabled them to keep out of the way of the Perseverance. *This* conduct on the part of the Grey Eagle, contributed very materially to the collision, and that vessel should share with the Perseverance the consequences of that disaster.



At the first position our light would be off (as they say it was) the larboard bow of the Grey Eagle, where it *would have continued if our light had been stationary.*

At the second position it would have closed in, working over to their *starboard* bow, unless a constant port was maintained, which should have warned them at once that our light was *not* stationary, and that they, having the wind on the larboard side, must avoid us, *and not undertake to do it by crossing our bows*, as the Diagram shows.